

**E2SHB 1276** - S COMM AMD

By Committee on Law & Justice

**NOT ADOPTED 4/15/2015**

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that impaired  
4 driving continues to be a significant cause of motor vehicle crashes  
5 and that additional measures need to be taken to identify people who  
6 are driving under the influence, provide appropriate sanctions, and  
7 ensure compliance with court-ordered restrictions. The legislature  
8 intends to increase the availability of forensic phlebotomists so  
9 that offenders can be appropriately and efficiently identified. The  
10 legislature further intends to keep impaired drivers off the public  
11 roads by making the fourth, rather than the fifth, offense a felony  
12 and require consecutive sentencing in certain cases to increase  
13 punishment and supervision of offenders. The legislature intends to  
14 clarify ignition interlock processes and requirements to ensure that  
15 those offenders ordered to have ignition interlock devices do not  
16 drive vehicles without the required devices.

17 **Conditions of release—Requirements—Ignition interlock device—24/7**  
18 **sobriety program monitoring**

19 **Sec. 2.** RCW 10.21.055 and 2013 2nd sp.s. c 35 s 1 are each  
20 amended to read as follows:

21 (1)(a) When any person charged with (~~or arrested for~~) a  
22 violation of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, in  
23 which the person has a prior offense as defined in RCW 46.61.5055 and  
24 the current offense involves alcohol, is released from custody  
25 (~~before~~) at arraignment or trial on bail or personal recognizance,  
26 the court authorizing the release shall require, as a condition of  
27 release(~~(τ)~~) that person (~~(τ)-(a)~~):

28 (i) Have a functioning ignition interlock device installed on all  
29 motor vehicles operated by the person, with proof of installation  
30 filed with the court by the person or the certified interlock  
31 provider within five business days of the date of release from

1 custody or as soon thereafter as determined by the court based on  
2 availability within the jurisdiction; (~~or (b)~~)

3 (ii) Comply with 24/7 sobriety program monitoring, as defined in  
4 RCW 36.28A.330; (~~or both~~)

5 (iii) Have an ignition interlock device pursuant to (a)(i) of  
6 this subsection and comply with 24/7 sobriety program monitoring  
7 pursuant to (a)(ii) of this subsection; or

8 (iv) Have an ignition interlock pursuant to (a)(i) of this  
9 subsection, file a sworn statement with the court upon release at  
10 arraignment that states the person agrees not to operate any motor  
11 vehicle while the ignition interlock restriction is imposed by the  
12 court, and submit to alcohol monitoring as outlined in RCW  
13 46.61.5055(5)(b).

14 (b) The court shall immediately notify the department of  
15 licensing when an ignition interlock restriction is imposed: (i) As a  
16 condition of release pursuant to (a) of this subsection; or (ii) in  
17 instances where a person is charged with or convicted of a violation  
18 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, and the offense  
19 involves alcohol. If the court imposes an ignition interlock  
20 restriction, the department of licensing shall attach or imprint a  
21 notation on the driving record of any person restricted under this  
22 section stating that the person may operate only a motor vehicle  
23 equipped with a functioning ignition interlock device.

24 (c) Pursuant to (a)(iv) of this subsection, the person ordered to  
25 install the ignition interlock pursuant to (a) of this subsection  
26 satisfies the requirement to install an ignition interlock by filing  
27 a sworn statement with the court at arraignment, that states that the  
28 person agrees not to operate any motor vehicle while the ignition  
29 interlock restriction is imposed by the court; provided, that the  
30 ignition interlock requirement will still be reported to the  
31 department pursuant to subsection (1)(b) of this section and it will  
32 remain unlawful for the person to operate any motor vehicle unless it  
33 is equipped with a fully functioning ignition interlock device.

34 (2)(a) Upon acquittal or dismissal of all pending or current  
35 charges relating to a violation of RCW 46.61.502, 46.61.504,  
36 46.61.520, or 46.61.522, or equivalent local ordinance, the court  
37 shall authorize removal of the ignition interlock device and lift any  
38 requirement to comply with electronic alcohol/drug monitoring imposed  
39 under subsection (1) of this section. Nothing in this section limits  
40 the authority of the court or department under RCW 46.20.720.

1 (b) If the court authorizes removal of an ignition interlock  
2 device imposed under (a) of this subsection the court shall  
3 immediately notify the department of licensing regarding the lifting  
4 of the ignition interlock restriction and the department of licensing  
5 shall release any attachment, imprint, or notation on such person's  
6 driving record relating to the ignition interlock requirement imposed  
7 under this section.

8 (3) When an ignition interlock restriction imposed as a condition  
9 of release is canceled, the court shall provide a defendant with a  
10 written order confirming release of the restriction. The written  
11 order shall serve as proof of release of the restriction until which  
12 time the department of licensing updates the driving record.

13 **Ignition interlock driver's license—Application—Eligibility—**  
14 **Cancellation—Costs—Rules**

15 **Sec. 3.** RCW 46.20.385 and 2013 2nd sp.s. c 35 s 20 are each  
16 amended to read as follows:

17 (1)(a) ~~((Beginning January 1, 2009,))~~ Any person licensed under  
18 this chapter or who has a valid driver's license from another state,  
19 who is convicted of: (i) A violation of RCW 46.61.502 or 46.61.504 or  
20 an equivalent local or out-of-state statute or ordinance, or (ii) a  
21 violation of RCW 46.61.520(1)(a) or an equivalent local or out-of-  
22 state statute or ordinance, or (iii) a conviction for a violation of  
23 RCW 46.61.520(1) (b) or (c) if the conviction is the result of a  
24 charge that was originally filed as a violation of RCW  
25 46.61.520(1)(a), or (iv) RCW 46.61.522(1)(b) or an equivalent local  
26 or out-of-state statute or ordinance, or (v) RCW 46.61.522(1) (a) or  
27 (c) if the conviction is the result of a charge that was originally  
28 filed as a violation of RCW 46.61.522(1)(b) committed while under the  
29 influence of intoxicating liquor or any drug, or (vi) who has had or  
30 will have his or her license suspended, revoked, or denied under RCW  
31 46.20.3101, or who is otherwise permitted under subsection (8) of  
32 this section, may submit to the department an application for an  
33 ignition interlock driver's license. The department, upon receipt of  
34 the prescribed fee and upon determining that the petitioner is  
35 eligible to receive the license, may issue an ignition interlock  
36 driver's license.

37 (b) A person may apply for an ignition interlock driver's license  
38 anytime, including immediately after receiving the notices under RCW

1 46.20.308 or after his or her license is suspended, revoked, or  
2 denied. (~~(A person receiving an ignition interlock driver's license~~  
3 ~~waives his or her right to a hearing or appeal under RCW 46.20.308.)~~)

4 (c) An applicant under this subsection shall provide proof to the  
5 satisfaction of the department that a functioning ignition interlock  
6 device has been installed on all vehicles operated by the person.

7 (i) The department shall require the person to maintain the  
8 device on all vehicles operated by the person and shall restrict the  
9 person to operating only vehicles equipped with the device, for the  
10 remainder of the period of suspension, revocation, or denial. Subject  
11 to the provisions of RCW 46.20.720(3)(b)(ii), the installation of an  
12 ignition interlock device is not necessary on vehicles owned, leased,  
13 or rented by a person's employer and on those vehicles whose care  
14 and/or maintenance is the temporary responsibility of the employer,  
15 and driven at the direction of a person's employer as a requirement  
16 of employment during working hours. The person must provide the  
17 department with a declaration pursuant to RCW 9A.72.085 from his or  
18 her employer stating that the person's employment requires the person  
19 to operate a vehicle owned by the employer or other persons during  
20 working hours.

21 (ii) Subject to any periodic renewal requirements established by  
22 the department under this section and subject to any applicable  
23 compliance requirements under this chapter or other law, an ignition  
24 interlock driver's license granted upon a suspension or revocation  
25 under RCW 46.61.5055 or 46.20.3101 extends through the remaining  
26 portion of any concurrent or consecutive suspension or revocation  
27 that may be imposed as the result of administrative action and  
28 criminal conviction arising out of the same incident.

29 (iii) The time period during which the person is licensed under  
30 this section shall apply on a day-for-day basis toward satisfying the  
31 period of time the ignition interlock device restriction is required  
32 under RCW 46.20.720 (~~and~~), 46.61.5055, 10.05.140, 46.61.500(3), and  
33 46.61.5249(4). Beginning with incidents occurring on or after  
34 September 1, 2011, when calculating the period of time for the  
35 restriction under RCW 46.20.720 (2) or (3), the department must also  
36 give the person a day-for-day credit for the time period, beginning  
37 from the date of the incident, during which the person kept an  
38 ignition interlock device installed on all vehicles the person  
39 operates. For the purposes of this subsection (1)(c)(iii), the term

1 "all vehicles" does not include vehicles that would be subject to the  
2 employer exception under RCW 46.20.720(3).

3 (2) An applicant for an ignition interlock driver's license who  
4 qualifies under subsection (1) of this section is eligible to receive  
5 a license only if the applicant files satisfactory proof of financial  
6 responsibility under chapter 46.29 RCW.

7 (3) Upon receipt of evidence that a holder of an ignition  
8 interlock driver's license granted under this subsection no longer  
9 has a functioning ignition interlock device installed on all vehicles  
10 operated by the driver, the director shall give written notice by  
11 first-class mail to the driver that the ignition interlock driver's  
12 license shall be canceled. If at any time before the cancellation  
13 goes into effect the driver submits evidence that a functioning  
14 ignition interlock device has been installed on all vehicles operated  
15 by the driver, the cancellation shall be stayed. If the cancellation  
16 becomes effective, the driver may obtain, at no additional charge, a  
17 new ignition interlock driver's license upon submittal of evidence  
18 that a functioning ignition interlock device has been installed on  
19 all vehicles operated by the driver.

20 (4) A person aggrieved by the decision of the department on the  
21 application for an ignition interlock driver's license may request a  
22 hearing as provided by rule of the department.

23 (5) The director shall cancel an ignition interlock driver's  
24 license after receiving notice that the holder thereof has been  
25 convicted of operating a motor vehicle in violation of its  
26 restrictions, no longer meets the eligibility requirements, or has  
27 been convicted of or found to have committed a separate offense or  
28 any other act or omission that under this chapter would warrant  
29 suspension or revocation of a regular driver's license. The  
30 department must give notice of the cancellation as provided under RCW  
31 46.20.245. A person whose ignition interlock driver's license has  
32 been canceled under this section may reapply for a new ignition  
33 interlock driver's license if he or she is otherwise qualified under  
34 this section and pays the fee required under RCW 46.20.380.

35 (6)(a) Unless costs are waived by the ignition interlock company  
36 or the person is indigent under RCW 10.101.010, the applicant shall  
37 pay the cost of installing, removing, and leasing the ignition  
38 interlock device and shall pay an additional fee of twenty dollars  
39 per month. Payments shall be made directly to the ignition interlock

1 company. The company shall remit the additional twenty dollar fee to  
2 the department.

3 (b) The department shall deposit the proceeds of the twenty  
4 dollar fee into the ignition interlock device revolving account.  
5 Expenditures from the account may be used only to administer and  
6 operate the ignition interlock device revolving account program. The  
7 department shall adopt rules to provide monetary assistance according  
8 to greatest need and when funds are available.

9 (7) The department shall adopt rules to implement ignition  
10 interlock licensing. The department shall consult with the  
11 administrative office of the courts, the state patrol, the Washington  
12 association of sheriffs and police chiefs, ignition interlock  
13 companies, and any other organization or entity the department deems  
14 appropriate.

15 (8)(a) Any person licensed under this chapter who is convicted of  
16 a violation of RCW 46.61.500 when the charge was originally filed as  
17 a violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
18 ordinance, may submit to the department an application for an  
19 ignition interlock driver's license under this section.

20 (b) A person who does not have any driver's license under this  
21 chapter, but who would otherwise be eligible under this section to  
22 apply for an ignition interlock license, may submit to the department  
23 an application for an ignition interlock license. The department may  
24 require the person to take any driver's licensing examination under  
25 this chapter and may require the person to also apply and qualify for  
26 a temporary restricted driver's license under RCW 46.20.391.

27 **Notation on driving record—Verification of interlock—Penalty**

28 **Sec. 4.** RCW 46.20.740 and 2010 c 269 s 8 are each amended to  
29 read as follows:

30 (1) The department shall attach or imprint a notation on the  
31 driving record of any person restricted under RCW 46.20.720,  
32 46.61.5055, or 10.05.140 stating that the person may operate only a  
33 motor vehicle equipped with a functioning ignition interlock device.  
34 The department shall determine the person's eligibility for licensing  
35 based upon written verification by a company doing business in the  
36 state that it has installed the required device on a vehicle owned or  
37 operated by the person seeking reinstatement. If, based upon  
38 notification from the interlock provider or otherwise, the department

1 determines that an ignition interlock required under this section is  
2 no longer installed or functioning as required, the department shall  
3 suspend the person's license or privilege to drive. Whenever the  
4 license or driving privilege of any person is suspended or revoked as  
5 a result of noncompliance with an ignition interlock requirement, the  
6 suspension shall remain in effect until the person provides notice  
7 issued by a company doing business in the state that a vehicle owned  
8 or operated by the person is equipped with a functioning ignition  
9 interlock device.

10 (2) It is a gross misdemeanor for a person with such a notation  
11 on his or her driving record to operate a motor vehicle that is not  
12 so equipped, unless the notation resulted from a restriction imposed  
13 as a condition of release and the restriction has been released by  
14 the court prior to driving.

15 (3) Any sentence imposed for a violation of subsection (2) of  
16 this section shall be served consecutively with any sentence imposed  
17 under RCW 46.20.750, 46.61.502, 46.61.504, or 46.61.5055.

#### 18 **Implied consent—Test refusal—Procedures**

19 **Sec. 5.** RCW 46.20.308 and 2013 2nd sp.s. c 35 s 36 are each  
20 amended to read as follows:

21 (1) Any person who operates a motor vehicle within this state is  
22 deemed to have given consent, subject to the provisions of RCW  
23 46.61.506, to a test or tests of his or her breath for the purpose of  
24 determining the alcohol concentration(~~(, THC concentration,)~~) or  
25 presence of any drug in his or her breath if arrested for any offense  
26 where, at the time of the arrest, the arresting officer has  
27 reasonable grounds to believe the person had been driving or was in  
28 actual physical control of a motor vehicle while under the influence  
29 of intoxicating liquor or any drug or was in violation of RCW  
30 46.61.503. (~~Neither consent nor this section precludes a police~~  
31 ~~officer from obtaining a search warrant for a person's breath or~~  
32 ~~blood.))~~)

33 (2) The test or tests of breath shall be administered at the  
34 direction of a law enforcement officer having reasonable grounds to  
35 believe the person to have been driving or in actual physical control  
36 of a motor vehicle within this state while under the influence of  
37 intoxicating liquor or any drug or the person to have been driving or  
38 in actual physical control of a motor vehicle while having alcohol or

1 THC in a concentration in violation of RCW 46.61.503 in his or her  
2 system and being under the age of twenty-one. Prior to administering  
3 a breath test pursuant to this section, the officer shall inform the  
4 person of his or her right under this section to refuse the breath  
5 test, and of his or her right to have additional tests administered  
6 by any qualified person of his or her choosing as provided in RCW  
7 46.61.506. The officer shall warn the driver, in substantially the  
8 following language, that:

9 (a) If the driver refuses to take the test, the driver's license,  
10 permit, or privilege to drive will be revoked or denied for at least  
11 one year; and

12 (b) If the driver refuses to take the test, the driver's refusal  
13 to take the test may be used in a criminal trial; and

14 (c) If the driver submits to the test and the test is  
15 administered, the driver's license, permit, or privilege to drive  
16 will be suspended, revoked, or denied for at least ninety days if:

17 (i) The driver is age twenty-one or over and the test indicates  
18 either that the alcohol concentration of the driver's breath is 0.08  
19 or more or that the THC concentration of the driver's blood is 5.00  
20 or more; or

21 (ii) The driver is under age twenty-one and the test indicates  
22 either that the alcohol concentration of the driver's breath is 0.02  
23 or more (~~or that the THC concentration of the driver's blood is~~  
24 ~~above 0.00)); or~~

25 (iii) The driver is under age twenty-one and the driver is in  
26 violation of RCW 46.61.502 or 46.61.504; and

27 (d) If the driver's license, permit, or privilege to drive is  
28 suspended, revoked, or denied the driver may be eligible to  
29 immediately apply for an ignition interlock driver's license.

30 ~~(3) ((Except as provided in this section, the test administered~~  
31 ~~shall be of the breath only. If an individual is unconscious or is~~  
32 ~~under arrest for the crime of felony driving under the influence of~~  
33 ~~intoxicating liquor or drugs under RCW 46.61.502(6), felony physical~~  
34 ~~control of a motor vehicle while under the influence of intoxicating~~  
35 ~~liquor or any drug under RCW 46.61.504(6), vehicular homicide as~~  
36 ~~provided in RCW 46.61.520, or vehicular assault as provided in RCW~~  
37 ~~46.61.522, or if an individual is under arrest for the crime of~~  
38 ~~driving while under the influence of intoxicating liquor or drugs as~~  
39 ~~provided in RCW 46.61.502, which arrest results from an accident in~~  
40 ~~which there has been serious bodily injury to another person, a~~



1 ~~breath or blood test may be administered without the consent of the~~  
2 ~~individual so arrested pursuant to a search warrant, a valid waiver~~  
3 ~~of the warrant requirement, or when exigent circumstances exist.~~

4 (4)) If, following his or her arrest and receipt of warnings  
5 under subsection (2) of this section, the person arrested ((refuses))  
6 exercises the right, granted herein, by refusing upon the request of  
7 a law enforcement officer to submit to a test or tests of his or her  
8 breath, no test shall be given except as otherwise authorized by ((a  
9 ~~search warrant~~)) law.

10 (4) Nothing in subsection (1), (2), or (3) of this section  
11 precludes a law enforcement officer from obtaining a person's blood  
12 to test for alcohol, marijuana, or any drug, pursuant to a search  
13 warrant, a valid waiver of the warrant requirement, when exigent  
14 circumstances exist, or under any other authority of law. Any blood  
15 drawn for the purpose of determining the person's alcohol or  
16 marijuana levels, or any drug, is drawn pursuant to this section when  
17 the officer has reasonable grounds to believe that the person is in  
18 physical control or driving a vehicle under the influence or in  
19 violation of RCW 46.61.503.

20 (5) If, after arrest and after ((the)) any other applicable  
21 conditions and requirements of this section have been satisfied, a  
22 test or tests of the person's blood or breath is administered and the  
23 test results indicate that the alcohol concentration of the person's  
24 breath or blood is 0.08 or more, or the THC concentration of the  
25 person's blood is 5.00 or more, if the person is age twenty-one or  
26 over, or that the alcohol concentration of the person's breath or  
27 blood is 0.02 or more, or the THC concentration of the person's blood  
28 is above 0.00, if the person is under the age of twenty-one, or the  
29 person refuses to submit to a test, the arresting officer or other  
30 law enforcement officer at whose direction any test has been given,  
31 or the department, where applicable, if the arrest results in a test  
32 of the person's blood, shall:

33 (a) Serve notice in writing on the person on behalf of the  
34 department of its intention to suspend, revoke, or deny the person's  
35 license, permit, or privilege to drive as required by subsection (6)  
36 of this section;

37 (b) Serve notice in writing on the person on behalf of the  
38 department of his or her right to a hearing, specifying the steps he  
39 or she must take to obtain a hearing as provided by subsection (7) of

1 this section (~~and that the person waives the right to a hearing if~~  
2 ~~he or she receives an ignition interlock driver's license~~);

3 (c) Serve notice in writing that the license or permit, if any,  
4 is a temporary license that is valid for sixty days from the date of  
5 arrest or from the date notice has been given in the event notice is  
6 given by the department following a blood test, or until the  
7 suspension, revocation, or denial of the person's license, permit, or  
8 privilege to drive is sustained at a hearing pursuant to subsection  
9 (7) of this section, whichever occurs first. No temporary license is  
10 valid to any greater degree than the license or permit that it  
11 replaces; and

12 (d) Immediately notify the department of the arrest and transmit  
13 to the department within seventy-two hours, except as delayed as the  
14 result of a blood test, a sworn report or report under a declaration  
15 authorized by RCW 9A.72.085 that states:

16 (i) That the officer had reasonable grounds to believe the  
17 arrested person had been driving or was in actual physical control of  
18 a motor vehicle within this state while under the influence of  
19 intoxicating liquor or drugs, or both, or was under the age of  
20 twenty-one years and had been driving or was in actual physical  
21 control of a motor vehicle while having an alcohol or THC  
22 concentration in violation of RCW 46.61.503;

23 (ii) That after receipt of (~~the~~) any applicable warnings  
24 required by subsection (2) of this section the person refused to  
25 submit to a test of his or her breath, or a test was administered and  
26 the results indicated that the alcohol concentration of the person's  
27 breath or blood was 0.08 or more, or the THC concentration of the  
28 person's blood was 5.00 or more, if the person is age twenty-one or  
29 over, or that the alcohol concentration of the person's breath or  
30 blood was 0.02 or more, or the THC concentration of the person's  
31 blood was above 0.00, if the person is under the age of twenty-one;  
32 and

33 (iii) Any other information that the director may require by  
34 rule.

35 (6) The department of licensing, upon the receipt of a sworn  
36 report or report under a declaration authorized by RCW 9A.72.085  
37 under subsection (5)(d) of this section, shall suspend, revoke, or  
38 deny the person's license, permit, or privilege to drive or any  
39 nonresident operating privilege, as provided in RCW 46.20.3101, such  
40 suspension, revocation, or denial to be effective beginning sixty

1 days from the date of arrest or from the date notice has been given  
2 in the event notice is given by the department following a blood  
3 test, or when sustained at a hearing pursuant to subsection (7) of  
4 this section, whichever occurs first.

5 (7) A person receiving notification under subsection (5)(b) of  
6 this section may, within twenty days after the notice has been given,  
7 request in writing a formal hearing before the department. The person  
8 shall pay a fee of three hundred seventy-five dollars as part of the  
9 request. If the request is mailed, it must be postmarked within  
10 twenty days after receipt of the notification. Upon timely receipt of  
11 such a request for a formal hearing, including receipt of the  
12 required three hundred seventy-five dollar fee, the department shall  
13 afford the person an opportunity for a hearing. The department may  
14 waive the required three hundred seventy-five dollar fee if the  
15 person is an indigent as defined in RCW 10.101.010. Except as  
16 otherwise provided in this section, the hearing is subject to and  
17 shall be scheduled and conducted in accordance with RCW 46.20.329 and  
18 46.20.332. The hearing shall be conducted in the county of the  
19 arrest, except that all or part of the hearing may, at the discretion  
20 of the department, be conducted by telephone or other electronic  
21 means. The hearing shall be held within sixty days following the  
22 arrest or following the date notice has been given in the event  
23 notice is given by the department following a blood test, unless  
24 otherwise agreed to by the department and the person, in which case  
25 the action by the department shall be stayed, and any valid temporary  
26 license (~~marked~~) under subsection (5) of this section extended, if  
27 the person is otherwise eligible for licensing. For the purposes of  
28 this section, the scope of the hearing shall cover the issues of  
29 whether a law enforcement officer had reasonable grounds to believe  
30 the person had been driving or was in actual physical control of a  
31 motor vehicle within this state while under the influence of  
32 intoxicating liquor or any drug or had been driving or was in actual  
33 physical control of a motor vehicle within this state while having  
34 alcohol in his or her system in a concentration of 0.02 or more, or  
35 THC in his or her system in a concentration above 0.00, if the person  
36 was under the age of twenty-one, whether the person was placed under  
37 arrest, and (a) whether the person refused to submit to the test or  
38 tests upon request of the officer after having been informed that  
39 such refusal would result in the revocation of the person's license,  
40 permit, or privilege to drive, or (b) if a test or tests were

1 administered, whether the applicable requirements of this section  
2 were satisfied before the administration of the test or tests,  
3 whether the person submitted to the test or tests, or whether a test  
4 was administered (~~without express consent~~) pursuant to a search  
5 warrant, a valid waiver of the warrant requirement, when exigent  
6 circumstances exist, or under any other authority of law as permitted  
7 under this section, and whether the test or tests indicated that the  
8 alcohol concentration of the person's breath or blood was 0.08 or  
9 more, or the THC concentration of the person's blood was 5.00 or  
10 more, if the person was age twenty-one or over at the time of the  
11 arrest, or that the alcohol concentration of the person's breath or  
12 blood was 0.02 or more, or the THC concentration of the person's  
13 blood was above 0.00, if the person was under the age of twenty-one  
14 at the time of the arrest. Where a person is found to be in actual  
15 physical control of a motor vehicle while under the influence of  
16 intoxicating liquor or any drug or was under the age of twenty-one at  
17 the time of the arrest and was in physical control of a motor vehicle  
18 while having alcohol in his or her system in a concentration of 0.02  
19 or THC concentration above 0.00, the person may petition the hearing  
20 officer to apply the affirmative defense found in RCW 46.61.504(3)  
21 and 46.61.503(2). The driver has the burden to prove the affirmative  
22 defense by a preponderance of the evidence. The sworn report or  
23 report under a declaration authorized by RCW 9A.72.085 submitted by a  
24 law enforcement officer is prima facie evidence that the officer had  
25 reasonable grounds to believe the person had been driving or was in  
26 actual physical control of a motor vehicle within this state while  
27 under the influence of intoxicating liquor or drugs, or both, or the  
28 person had been driving or was in actual physical control of a motor  
29 vehicle within this state while having alcohol in his or her system  
30 in a concentration of 0.02 or more, or THC in his or her system in a  
31 concentration above 0.00, and was under the age of twenty-one and  
32 that the officer complied with the requirements of this section.

33 A hearing officer shall conduct the hearing, may issue subpoenas  
34 for the attendance of witnesses and the production of documents, and  
35 shall administer oaths to witnesses. The hearing officer shall not  
36 issue a subpoena for the attendance of a witness at the request of  
37 the person unless the request is accompanied by the fee required by  
38 RCW 5.56.010 for a witness in district court. The sworn report or  
39 report under a declaration authorized by RCW 9A.72.085 of the law  
40 enforcement officer and any other evidence accompanying the report

1 shall be admissible without further evidentiary foundation and the  
2 certifications authorized by the criminal rules for courts of limited  
3 jurisdiction shall be admissible without further evidentiary  
4 foundation. The person may be represented by counsel, may question  
5 witnesses, may present evidence, and may testify. The department  
6 shall order that the suspension, revocation, or denial either be  
7 rescinded or sustained.

8 (8) If the suspension, revocation, or denial is sustained after  
9 such a hearing, the person whose license, privilege, or permit is  
10 suspended, revoked, or denied has the right to file a petition in the  
11 superior court of the county of arrest to review the final order of  
12 revocation by the department in the same manner as an appeal from a  
13 decision of a court of limited jurisdiction. Notice of appeal must be  
14 filed within thirty days after the date the final order is served or  
15 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ  
16 1.1, or other statutes or rules referencing de novo review, the  
17 appeal shall be limited to a review of the record of the  
18 administrative hearing. The appellant must pay the costs associated  
19 with obtaining the record of the hearing before the hearing officer.  
20 The filing of the appeal does not stay the effective date of the  
21 suspension, revocation, or denial. A petition filed under this  
22 subsection must include the petitioner's grounds for requesting  
23 review. Upon granting petitioner's request for review, the court  
24 shall review the department's final order of suspension, revocation,  
25 or denial as expeditiously as possible. The review must be limited to  
26 a determination of whether the department has committed any errors of  
27 law. The superior court shall accept those factual determinations  
28 supported by substantial evidence in the record: (a) That were  
29 expressly made by the department; or (b) that may reasonably be  
30 inferred from the final order of the department. The superior court  
31 may reverse, affirm, or modify the decision of the department or  
32 remand the case back to the department for further proceedings. The  
33 decision of the superior court must be in writing and filed in the  
34 clerk's office with the other papers in the case. The court shall  
35 state the reasons for the decision. If judicial relief is sought for  
36 a stay or other temporary remedy from the department's action, the  
37 court shall not grant such relief unless the court finds that the  
38 appellant is likely to prevail in the appeal and that without a stay  
39 the appellant will suffer irreparable injury. If the court stays the

1 suspension, revocation, or denial it may impose conditions on such  
2 stay.

3 (9)(a) If a person whose driver's license, permit, or privilege  
4 to drive has been or will be suspended, revoked, or denied under  
5 subsection (6) of this section, other than as a result of a breath  
6 test refusal, and who has not committed an offense for which he or  
7 she was granted a deferred prosecution under chapter 10.05 RCW,  
8 petitions a court for a deferred prosecution on criminal charges  
9 arising out of the arrest for which action has been or will be taken  
10 under subsection (6) of this section, or notifies the department of  
11 licensing of the intent to seek such a deferred prosecution, then the  
12 license suspension or revocation shall be stayed pending entry of the  
13 deferred prosecution. The stay shall not be longer than one hundred  
14 fifty days after the date charges are filed, or two years after the  
15 date of the arrest, whichever time period is shorter. If the court  
16 stays the suspension, revocation, or denial, it may impose conditions  
17 on such stay. If the person is otherwise eligible for licensing, the  
18 department shall issue a temporary license, or extend any valid  
19 temporary license under subsection (5) of this section, for the  
20 period of the stay. If a deferred prosecution treatment plan is not  
21 recommended in the report made under RCW 10.05.050, or if treatment  
22 is rejected by the court, or if the person declines to accept an  
23 offered treatment plan, or if the person violates any condition  
24 imposed by the court, then the court shall immediately direct the  
25 department to cancel the stay and any temporary (~~marked~~) license or  
26 extension of a temporary license issued under this subsection.

27 (b) A suspension, revocation, or denial imposed under this  
28 section, other than as a result of a breath test refusal, shall be  
29 stayed if the person is accepted for deferred prosecution as provided  
30 in chapter 10.05 RCW for the incident upon which the suspension,  
31 revocation, or denial is based. If the deferred prosecution is  
32 terminated, the stay shall be lifted and the suspension, revocation,  
33 or denial reinstated. If the deferred prosecution is completed, the  
34 stay shall be lifted and the suspension, revocation, or denial  
35 canceled.

36 (c) The provisions of (b) of this subsection relating to a stay  
37 of a suspension, revocation, or denial and the cancellation of any  
38 suspension, revocation, or denial do not apply to the suspension,  
39 revocation, denial, or disqualification of a person's commercial  
40 driver's license or privilege to operate a commercial motor vehicle.

1 (10) When it has been finally determined under the procedures of  
2 this section that a nonresident's privilege to operate a motor  
3 vehicle in this state has been suspended, revoked, or denied, the  
4 department shall give information in writing of the action taken to  
5 the motor vehicle administrator of the state of the person's  
6 residence and of any state in which he or she has a license.

7 **Circumventing ignition interlock—Penalty**

8 **Sec. 6.** RCW 46.20.750 and 2005 c 200 s 2 are each amended to  
9 read as follows:

10 (1) A person who is restricted to the use of a vehicle equipped  
11 with an ignition interlock device (~~((and who tampers with the device  
12 or directs, authorizes, or requests another to tamper with the  
13 device, in order to circumvent the device by modifying, detaching,  
14 disconnecting, or otherwise disabling it,))~~) is guilty of a gross  
15 misdemeanor if the restricted driver:

16 (a) Tampers with the device by modifying, detaching,  
17 disconnecting, or otherwise disabling it to allow the restricted  
18 driver to operate the vehicle;

19 (b) Uses or requests another person to use a filter or other  
20 device to circumvent the ignition interlock or to start or operate  
21 the vehicle to allow the restricted driver to operate the vehicle;

22 (c) Has, directs, authorizes, or requests another person to  
23 tamper with the device by modifying, detaching, disconnecting, or  
24 otherwise disabling it to allow the restricted driver to operate the  
25 vehicle; or

26 (d) Has, allows, directs, authorizes, or requests another person  
27 to blow or otherwise exhale into the device in order to circumvent  
28 the device to allow the restricted driver to operate the vehicle.

29 (2) A person who knowingly assists another person who is  
30 restricted to the use of a vehicle equipped with an ignition  
31 interlock device to circumvent the device or to start and operate  
32 that vehicle (~~((in violation of a court order))~~) is guilty of a gross  
33 misdemeanor. The provisions of this subsection do not apply if the  
34 starting of a motor vehicle, or the request to start a motor vehicle,  
35 equipped with an ignition interlock device is done for the purpose of  
36 safety or mechanical repair of the device or the vehicle and the  
37 person subject to the court order does not operate the vehicle.

1       (3) Any sentence imposed for a violation of subsection (1) of  
2 this section shall be served consecutively with any sentence imposed  
3 under RCW 46.20.740, 46.61.502, 46.61.504, 46.61.5055,  
4 46.61.520(1)(a), or 46.61.522(1)(b).

5       **Commercial vehicles—Test for alcohol or drugs—Disqualification for**  
6       **refusal of test or positive test—Procedures**

7       **Sec. 7.** RCW 46.25.120 and 2013 2nd sp.s. c 35 s 12 are each  
8 amended to read as follows:

9       (1) A person who drives a commercial motor vehicle within this  
10 state is deemed to have given consent, subject to RCW 46.61.506, to  
11 take a test or tests of that person's (~~blood or~~) breath for the  
12 purpose of determining that person's alcohol concentration or the  
13 presence of other drugs.

14       (2) A test or tests may be administered at the direction of a law  
15 enforcement officer, who after stopping or detaining the commercial  
16 motor vehicle driver, has (~~probable cause~~) reasonable grounds to  
17 believe that driver was driving a commercial motor vehicle while  
18 having alcohol in his or her system or while under the influence of  
19 any drug.

20       (3) The law enforcement officer requesting the test under  
21 subsection (1) of this section shall warn the person requested to  
22 submit to the test that a refusal to submit will result in that  
23 person being disqualified from operating a commercial motor vehicle  
24 under RCW 46.25.090.

25       (4) A law enforcement officer who at the time of stopping or  
26 detaining a commercial motor vehicle driver has reasonable grounds to  
27 believe that driver was driving a commercial motor vehicle while  
28 having alcohol, marijuana, or any drug in his or her system or while  
29 under the influence of alcohol, marijuana, or any drug may obtain a  
30 blood test pursuant to a search warrant, a valid waiver of the  
31 warrant requirement, when exigent circumstances exist, or under any  
32 other authority of law.

33       (5) If the person refuses testing, or (~~submits to~~) a test is  
34 administered that discloses an alcohol concentration of 0.04 or more  
35 or any measurable amount of THC concentration, the law enforcement  
36 officer shall submit a sworn report to the department certifying that  
37 the test was requested pursuant to subsection (1) of this section or  
38 a blood test was administered pursuant to subsection (4) of this



1 section and that the person refused to submit to testing, or  
2 (~~submitted to~~) a test was administered that disclosed an alcohol  
3 concentration of 0.04 or more or any measurable amount of THC  
4 concentration.

5 (~~(+5)~~) (6) Upon receipt of the sworn report of a law enforcement  
6 officer under subsection (~~(+4)~~) (5) of this section, the department  
7 shall disqualify the driver from driving a commercial motor vehicle  
8 under RCW 46.25.090, subject to the hearing provisions of RCW  
9 46.20.329 and 46.20.332. The hearing shall be conducted in the county  
10 of the arrest. For the purposes of this section, the hearing shall  
11 cover the issues of whether a law enforcement officer had reasonable  
12 grounds to believe the person had been driving or was in actual  
13 physical control of a commercial motor vehicle within this state  
14 while having alcohol in the person's system or while under the  
15 influence of any drug, whether the person refused to submit to the  
16 test or tests upon request of the officer after having been informed  
17 that the refusal would result in the disqualification of the person  
18 from driving a commercial motor vehicle, if applicable, and, if the  
19 test was administered, whether the results indicated an alcohol  
20 concentration of 0.04 percent or more or any measurable amount of THC  
21 concentration. The department shall order that the disqualification  
22 of the person either be rescinded or sustained. Any decision by the  
23 department disqualifying a person from driving a commercial motor  
24 vehicle is stayed and does not take effect while a formal hearing is  
25 pending under this section or during the pendency of a subsequent  
26 appeal to superior court so long as there is no conviction for a  
27 moving violation or no finding that the person has committed a  
28 traffic infraction that is a moving violation during the pendency of  
29 the hearing and appeal. If the disqualification of the person is  
30 sustained after the hearing, the person who is disqualified may file  
31 a petition in the superior court of the county of arrest to review  
32 the final order of disqualification by the department in the manner  
33 provided in RCW 46.20.334.

34 (~~(+6)~~) (7) If a motor carrier or employer who is required to  
35 have a testing program under 49 C.F.R. 382 knows that a commercial  
36 driver in his or her employ has refused to submit to testing under  
37 this section and has not been disqualified from driving a commercial  
38 motor vehicle, the employer may notify law enforcement or his or her  
39 medical review officer or breath alcohol technician that the driver  
40 has refused to submit to the required testing.

1       (~~(7)~~) (8) The hearing provisions of this section do not apply  
2 to those persons disqualified from driving a commercial motor vehicle  
3 under RCW 46.25.090(7).

4                                   **Open container law for marijuana**

5       NEW SECTION.   **Sec. 8.**   A new section is added to chapter 46.61  
6 RCW to read as follows:

7       (1)(a) It is a traffic infraction:

8       (i) For the registered owner of a motor vehicle, or the driver if  
9 the registered owner is not then present, or passengers in the  
10 vehicle, to keep marijuana in a motor vehicle when the vehicle is  
11 upon a highway, unless it is (A) in the trunk of the vehicle, (B) in  
12 some other area of the vehicle not normally occupied or directly  
13 accessible by the driver or passengers if the vehicle does not have a  
14 trunk, or (C) in a package, container, or receptacle that has not  
15 been opened or the seal broken or contents partially removed. A  
16 utility compartment or glove compartment is deemed to be within the  
17 area occupied by the driver and passengers;

18       (ii) To consume marijuana in any manner including, but not  
19 limited to, smoking or ingesting in a motor vehicle when the vehicle  
20 is upon the public highway; or

21       (iii) To place marijuana in a container specifically labeled by  
22 the manufacturer of the container as containing a nonmarijuana  
23 substance and to then violate (a)(i) of this subsection.

24       (b) There is a rebuttable presumption that it is a traffic  
25 infraction if the original container of marijuana is incorrectly  
26 labeled and there is a subsequent violation of (a)(i) of this  
27 subsection.

28       (2) As used in this section, "marijuana" or "marihuana" means all  
29 parts of the plant *Cannabis*, whether growing or not; the seeds  
30 thereof; the resin extracted from any part of the plant; and every  
31 compound, manufacture, salt, derivative, mixture, or preparation of  
32 the plant, its seeds, or resin. The term does not include the mature  
33 stalks of the plant, fiber produced from the stalks, oil or cake made  
34 from the seeds of the plant, any other compound, manufacture, salt,  
35 derivative, mixture, or preparation of the mature stalks, except the  
36 resin extracted therefrom, fiber, oil, or cake, or the sterilized  
37 seed of the plant which is incapable of germination.

1                                   **Alcohol and drug violators—Penalty schedule**

2           **Sec. 9.** RCW 46.61.5055 and 2014 c 100 s 1 are each amended to  
3 read as follows:

4           (1) **No prior offenses in seven years.** Except as provided in RCW  
5 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
6 violation of RCW 46.61.502 or 46.61.504 and who has no prior offense  
7 within seven years shall be punished as follows:

8           (a) **Penalty for alcohol concentration less than 0.15.** In the case  
9 of a person whose alcohol concentration was less than 0.15, or for  
10 whom for reasons other than the person's refusal to take a test  
11 offered pursuant to RCW 46.20.308 there is no test result indicating  
12 the person's alcohol concentration:

13           (i) By imprisonment for not less than one day nor more than three  
14 hundred sixty-four days. Twenty-four consecutive hours of the  
15 imprisonment may not be suspended unless the court finds that the  
16 imposition of this mandatory minimum sentence would impose a  
17 substantial risk to the offender's physical or mental well-being.  
18 Whenever the mandatory minimum sentence is suspended, the court shall  
19 state in writing the reason for granting the suspension and the facts  
20 upon which the suspension is based. In lieu of the mandatory minimum  
21 term of imprisonment required under this subsection (1)(a)(i), the  
22 court may order not less than fifteen days of electronic home  
23 monitoring. The offender shall pay the cost of electronic home  
24 monitoring. The county or municipality in which the penalty is being  
25 imposed shall determine the cost. The court may also require the  
26 offender's electronic home monitoring device or other separate  
27 alcohol monitoring device to include an alcohol detection  
28 breathalyzer, and the court may restrict the amount of alcohol the  
29 offender may consume during the time the offender is on electronic  
30 home monitoring; and

31           (ii) By a fine of not less than three hundred fifty dollars nor  
32 more than five thousand dollars. Three hundred fifty dollars of the  
33 fine may not be suspended unless the court finds the offender to be  
34 indigent; or

35           (b) **Penalty for alcohol concentration at least 0.15.** In the case  
36 of a person whose alcohol concentration was at least 0.15, or for  
37 whom by reason of the person's refusal to take a test offered  
38 pursuant to RCW 46.20.308 there is no test result indicating the  
39 person's alcohol concentration:

1 (i) By imprisonment for not less than two days nor more than  
2 three hundred sixty-four days. Forty-eight consecutive hours of the  
3 imprisonment may not be suspended unless the court finds that the  
4 imposition of this mandatory minimum sentence would impose a  
5 substantial risk to the offender's physical or mental well-being.  
6 Whenever the mandatory minimum sentence is suspended, the court shall  
7 state in writing the reason for granting the suspension and the facts  
8 upon which the suspension is based. In lieu of the mandatory minimum  
9 term of imprisonment required under this subsection (1)(b)(i), the  
10 court may order not less than thirty days of electronic home  
11 monitoring. The offender shall pay the cost of electronic home  
12 monitoring. The county or municipality in which the penalty is being  
13 imposed shall determine the cost. The court may also require the  
14 offender's electronic home monitoring device to include an alcohol  
15 detection breathalyzer or other separate alcohol monitoring device,  
16 and the court may restrict the amount of alcohol the offender may  
17 consume during the time the offender is on electronic home  
18 monitoring; and

19 (ii) By a fine of not less than five hundred dollars nor more  
20 than five thousand dollars. Five hundred dollars of the fine may not  
21 be suspended unless the court finds the offender to be indigent.

22 (2) **One prior offense in seven years.** Except as provided in RCW  
23 46.61.502(6) or 46.61.504(6), a person who is convicted of a  
24 violation of RCW 46.61.502 or 46.61.504 and who has one prior offense  
25 within seven years shall be punished as follows:

26 (a) **Penalty for alcohol concentration less than 0.15.** In the case  
27 of a person whose alcohol concentration was less than 0.15, or for  
28 whom for reasons other than the person's refusal to take a test  
29 offered pursuant to RCW 46.20.308 there is no test result indicating  
30 the person's alcohol concentration:

31 (i) By imprisonment for not less than thirty days nor more than  
32 three hundred sixty-four days and sixty days of electronic home  
33 monitoring. In lieu of the mandatory minimum term of sixty days  
34 electronic home monitoring, the court may order at least an  
35 additional four days in jail or, if available in that county or city,  
36 a six-month period of 24/7 sobriety program monitoring pursuant to  
37 RCW 36.28A.300 through 36.28A.390, and the court shall order an  
38 expanded alcohol assessment and treatment, if deemed appropriate by  
39 the assessment. The offender shall pay for the cost of the electronic  
40 monitoring. The county or municipality where the penalty is being

1 imposed shall determine the cost. The court may also require the  
2 offender's electronic home monitoring device include an alcohol  
3 detection breathalyzer or other separate alcohol monitoring device,  
4 and may restrict the amount of alcohol the offender may consume  
5 during the time the offender is on electronic home monitoring. Thirty  
6 days of imprisonment and sixty days of electronic home monitoring may  
7 not be suspended unless the court finds that the imposition of this  
8 mandatory minimum sentence would impose a substantial risk to the  
9 offender's physical or mental well-being. Whenever the mandatory  
10 minimum sentence is suspended, the court shall state in writing the  
11 reason for granting the suspension and the facts upon which the  
12 suspension is based; and

13 (ii) By a fine of not less than five hundred dollars nor more  
14 than five thousand dollars. Five hundred dollars of the fine may not  
15 be suspended unless the court finds the offender to be indigent; or

16 (b) **Penalty for alcohol concentration at least 0.15.** In the case  
17 of a person whose alcohol concentration was at least 0.15, or for  
18 whom by reason of the person's refusal to take a test offered  
19 pursuant to RCW 46.20.308 there is no test result indicating the  
20 person's alcohol concentration:

21 (i) By imprisonment for not less than forty-five days nor more  
22 than three hundred sixty-four days and ninety days of electronic home  
23 monitoring. In lieu of the mandatory minimum term of ninety days  
24 electronic home monitoring, the court may order at least an  
25 additional six days in jail or, if available in that county or city,  
26 a six-month period of 24/7 sobriety program monitoring pursuant to  
27 RCW 36.28A.300 through 36.28A.390, and the court shall order an  
28 expanded alcohol assessment and treatment, if deemed appropriate by  
29 the assessment. The offender shall pay for the cost of the electronic  
30 monitoring. The county or municipality where the penalty is being  
31 imposed shall determine the cost. The court may also require the  
32 offender's electronic home monitoring device include an alcohol  
33 detection breathalyzer or other separate alcohol monitoring device,  
34 and may restrict the amount of alcohol the offender may consume  
35 during the time the offender is on electronic home monitoring. Forty-  
36 five days of imprisonment and ninety days of electronic home  
37 monitoring may not be suspended unless the court finds that the  
38 imposition of this mandatory minimum sentence would impose a  
39 substantial risk to the offender's physical or mental well-being.  
40 Whenever the mandatory minimum sentence is suspended, the court shall

1 state in writing the reason for granting the suspension and the facts  
2 upon which the suspension is based; and

3 (ii) By a fine of not less than seven hundred fifty dollars nor  
4 more than five thousand dollars. Seven hundred fifty dollars of the  
5 fine may not be suspended unless the court finds the offender to be  
6 indigent.

7 (3) **Two ((~~or three~~ prior)) offenses in seven years.** Except as  
8 provided in RCW 46.61.502(6) or 46.61.504(6), a person who is  
9 convicted of a violation of RCW 46.61.502 or 46.61.504 and who has  
10 two ((~~or three~~)) prior offenses within seven years shall be punished  
11 as follows:

12 (a) **Penalty for alcohol concentration less than 0.15.** In the case  
13 of a person whose alcohol concentration was less than 0.15, or for  
14 whom for reasons other than the person's refusal to take a test  
15 offered pursuant to RCW 46.20.308 there is no test result indicating  
16 the person's alcohol concentration:

17 (i) By imprisonment for not less than ninety days nor more than  
18 three hundred sixty-four days, if available in that county or city, a  
19 six-month period of 24/7 sobriety program monitoring pursuant to RCW  
20 36.28A.300 through 36.28A.390, and one hundred twenty days of  
21 electronic home monitoring. In lieu of the mandatory minimum term of  
22 one hundred twenty days of electronic home monitoring, the court may  
23 order at least an additional eight days in jail. The court shall  
24 order an expanded alcohol assessment and treatment, if deemed  
25 appropriate by the assessment. The offender shall pay for the cost of  
26 the electronic monitoring. The county or municipality where the  
27 penalty is being imposed shall determine the cost. The court may also  
28 require the offender's electronic home monitoring device include an  
29 alcohol detection breathalyzer or other separate alcohol monitoring  
30 device, and may restrict the amount of alcohol the offender may  
31 consume during the time the offender is on electronic home  
32 monitoring. Ninety days of imprisonment and one hundred twenty days  
33 of electronic home monitoring may not be suspended unless the court  
34 finds that the imposition of this mandatory minimum sentence would  
35 impose a substantial risk to the offender's physical or mental well-  
36 being. Whenever the mandatory minimum sentence is suspended, the  
37 court shall state in writing the reason for granting the suspension  
38 and the facts upon which the suspension is based; and

1 (ii) By a fine of not less than one thousand dollars nor more  
2 than five thousand dollars. One thousand dollars of the fine may not  
3 be suspended unless the court finds the offender to be indigent; or

4 (b) **Penalty for alcohol concentration at least 0.15.** In the case  
5 of a person whose alcohol concentration was at least 0.15, or for  
6 whom by reason of the person's refusal to take a test offered  
7 pursuant to RCW 46.20.308 there is no test result indicating the  
8 person's alcohol concentration:

9 (i) By imprisonment for not less than one hundred twenty days nor  
10 more than three hundred sixty-four days, if available in that county  
11 or city, a six-month period of 24/7 sobriety program monitoring  
12 pursuant to RCW 36.28A.300 through 36.28A.390, and one hundred fifty  
13 days of electronic home monitoring. In lieu of the mandatory minimum  
14 term of one hundred fifty days of electronic home monitoring, the  
15 court may order at least an additional ten days in jail. The offender  
16 shall pay for the cost of the electronic monitoring. The court shall  
17 order an expanded alcohol assessment and treatment, if deemed  
18 appropriate by the assessment. The county or municipality where the  
19 penalty is being imposed shall determine the cost. The court may also  
20 require the offender's electronic home monitoring device include an  
21 alcohol detection breathalyzer or other separate alcohol monitoring  
22 device, and may restrict the amount of alcohol the offender may  
23 consume during the time the offender is on electronic home  
24 monitoring. One hundred twenty days of imprisonment and one hundred  
25 fifty days of electronic home monitoring may not be suspended unless  
26 the court finds that the imposition of this mandatory minimum  
27 sentence would impose a substantial risk to the offender's physical  
28 or mental well-being. Whenever the mandatory minimum sentence is  
29 suspended, the court shall state in writing the reason for granting  
30 the suspension and the facts upon which the suspension is based; and

31 (ii) By a fine of not less than one thousand five hundred dollars  
32 nor more than five thousand dollars. One thousand five hundred  
33 dollars of the fine may not be suspended unless the court finds the  
34 offender to be indigent.

35 (4) (~~Four~~) **Three or more prior offenses in ten years.** A person  
36 who is convicted of a violation of RCW 46.61.502 or 46.61.504 shall  
37 be punished under chapter 9.94A RCW if:

38 (a) The person has (~~four~~) three or more prior offenses within  
39 ten years; or

40 (b) The person has ever previously been convicted of:

1 (i) A violation of RCW 46.61.520 committed while under the  
2 influence of intoxicating liquor or any drug;

3 (ii) A violation of RCW 46.61.522 committed while under the  
4 influence of intoxicating liquor or any drug;

5 (iii) An out-of-state offense comparable to the offense specified  
6 in (b)(i) or (ii) of this subsection; or

7 (iv) A violation of RCW 46.61.502(6) or 46.61.504(6).

8 (5) **Monitoring.**

9 (a) **Ignition interlock device.** The court shall require any person  
10 convicted of a violation of RCW 46.61.502 or 46.61.504 or an  
11 equivalent local ordinance to comply with the rules and requirements  
12 of the department regarding the installation and use of a functioning  
13 ignition interlock device installed on all motor vehicles operated by  
14 the person.

15 (b) **Monitoring devices.** If the court orders that a person refrain  
16 from consuming any alcohol, the court may order the person to submit  
17 to alcohol monitoring through an alcohol detection breathalyzer  
18 device, transdermal sensor device, or other technology designed to  
19 detect alcohol in a person's system. The person shall pay for the  
20 cost of the monitoring, unless the court specifies that the cost of  
21 monitoring will be paid with funds that are available from an  
22 alternative source identified by the court. The county or  
23 municipality where the penalty is being imposed shall determine the  
24 cost.

25 (c) **Ignition interlock device substituted for 24/7 sobriety**  
26 **program monitoring.** In any county or city where a 24/7 sobriety  
27 program is available and verified by the Washington association of  
28 sheriffs and police chiefs, the court shall:

29 (i) Order the person to install and use a functioning ignition  
30 interlock or other device in lieu of such period of 24/7 sobriety  
31 program monitoring;

32 (ii) Order the person to a period of 24/7 sobriety program  
33 monitoring pursuant to subsections (1) through (3) of this section;  
34 or

35 (iii) Order the person to install and use a functioning ignition  
36 interlock or other device in addition to a period of 24/7 sobriety  
37 program monitoring pursuant to subsections (1) through (3) of this  
38 section.

39 (6) **Penalty for having a minor passenger in vehicle.** If a person  
40 who is convicted of a violation of RCW 46.61.502 or 46.61.504



1 committed the offense while a passenger under the age of sixteen was  
2 in the vehicle, the court shall:

3 (a) Order the use of an ignition interlock or other device for an  
4 additional six months;

5 (b) In any case in which the person has no prior offenses within  
6 seven years, and except as provided in RCW 46.61.502(6) or  
7 46.61.504(6), order an additional twenty-four hours of imprisonment  
8 and a fine of not less than one thousand dollars and not more than  
9 five thousand dollars. One thousand dollars of the fine may not be  
10 suspended unless the court finds the offender to be indigent;

11 (c) In any case in which the person has one prior offense within  
12 seven years, and except as provided in RCW 46.61.502(6) or  
13 46.61.504(6), order an additional five days of imprisonment and a  
14 fine of not less than two thousand dollars and not more than five  
15 thousand dollars. One thousand dollars of the fine may not be  
16 suspended unless the court finds the offender to be indigent;

17 (d) In any case in which the person has two or three prior  
18 offenses within seven years, and except as provided in RCW  
19 46.61.502(6) or 46.61.504(6), order an additional ten days of  
20 imprisonment and a fine of not less than three thousand dollars and  
21 not more than ten thousand dollars. One thousand dollars of the fine  
22 may not be suspended unless the court finds the offender to be  
23 indigent.

24 (7) **Other items courts must consider while setting penalties.** In  
25 exercising its discretion in setting penalties within the limits  
26 allowed by this section, the court shall particularly consider the  
27 following:

28 (a) Whether the person's driving at the time of the offense was  
29 responsible for injury or damage to another or another's property;

30 (b) Whether at the time of the offense the person was driving or  
31 in physical control of a vehicle with one or more passengers;

32 (c) Whether the driver was driving in the opposite direction of  
33 the normal flow of traffic on a multiple lane highway, as defined by  
34 RCW 46.04.350, with a posted speed limit of forty-five miles per hour  
35 or greater; and

36 (d) Whether a child passenger under the age of sixteen was an  
37 occupant in the driver's vehicle.

38 (8) **Treatment and information school.** An offender punishable  
39 under this section is subject to the alcohol assessment and treatment  
40 provisions of RCW 46.61.5056.

1           (9) **Driver's license privileges of the defendant.** The license,  
2 permit, or nonresident privilege of a person convicted of driving or  
3 being in physical control of a motor vehicle while under the  
4 influence of intoxicating liquor or drugs must:

5           (a) **Penalty for alcohol concentration less than 0.15.** If the  
6 person's alcohol concentration was less than 0.15, or if for reasons  
7 other than the person's refusal to take a test offered under RCW  
8 46.20.308 there is no test result indicating the person's alcohol  
9 concentration:

10           (i) Where there has been no prior offense within seven years, be  
11 suspended or denied by the department for ninety days;

12           (ii) Where there has been one prior offense within seven years,  
13 be revoked or denied by the department for two years; or

14           (iii) Where there have been two or more prior offenses within  
15 seven years, be revoked or denied by the department for three years;

16           (b) **Penalty for alcohol concentration at least 0.15.** If the  
17 person's alcohol concentration was at least 0.15:

18           (i) Where there has been no prior offense within seven years, be  
19 revoked or denied by the department for one year;

20           (ii) Where there has been one prior offense within seven years,  
21 be revoked or denied by the department for nine hundred days; or

22           (iii) Where there have been two or more prior offenses within  
23 seven years, be revoked or denied by the department for four years;  
24 or

25           (c) **Penalty for refusing to take test.** If by reason of the  
26 person's refusal to take a test offered under RCW 46.20.308, there is  
27 no test result indicating the person's alcohol concentration:

28           (i) Where there have been no prior offenses within seven years,  
29 be revoked or denied by the department for two years;

30           (ii) Where there has been one prior offense within seven years,  
31 be revoked or denied by the department for three years; or

32           (iii) Where there have been two or more previous offenses within  
33 seven years, be revoked or denied by the department for four years.

34           The department shall grant credit on a day-for-day basis for any  
35 portion of a suspension, revocation, or denial already served under  
36 this subsection for a suspension, revocation, or denial imposed under  
37 RCW 46.20.3101 arising out of the same incident.

38           Upon its own motion or upon motion by a person, a court may find,  
39 on the record, that notice to the department under RCW 46.20.270 has  
40 been delayed for three years or more as a result of a clerical or

1 court error. If so, the court may order that the person's license,  
2 permit, or nonresident privilege shall not be revoked, suspended, or  
3 denied for that offense. The court shall send notice of the finding  
4 and order to the department and to the person. Upon receipt of the  
5 notice from the court, the department shall not revoke, suspend, or  
6 deny the license, permit, or nonresident privilege of the person for  
7 that offense.

8 For purposes of this subsection (9), the department shall refer  
9 to the driver's record maintained under RCW 46.52.120 when  
10 determining the existence of prior offenses.

11 **(10) Probation of driving privilege.** After expiration of any  
12 period of suspension, revocation, or denial of the offender's  
13 license, permit, or privilege to drive required by this section, the  
14 department shall place the offender's driving privilege in  
15 probationary status pursuant to RCW 46.20.355.

16 **(11) Conditions of probation.** (a) In addition to any  
17 nonsuspendable and nondeferrable jail sentence required by this  
18 section, whenever the court imposes up to three hundred sixty-four  
19 days in jail, the court shall also suspend but shall not defer a  
20 period of confinement for a period not exceeding five years. The  
21 court shall impose conditions of probation that include: (i) Not  
22 driving a motor vehicle within this state without a valid license to  
23 drive (~~and~~); (ii) not driving a motor vehicle within this state  
24 without proof of liability insurance or other financial  
25 responsibility for the future pursuant to RCW 46.30.020; (~~(+ii+)~~)  
26 (iii) not driving or being in physical control of a motor vehicle  
27 within this state while having an alcohol concentration of 0.08 or  
28 more or a THC concentration of 5.00 nanograms per milliliter of whole  
29 blood or higher, within two hours after driving; (~~and-(iii+)~~) (iv)  
30 not refusing to submit to a test of his or her breath or blood to  
31 determine alcohol or drug concentration upon request of a law  
32 enforcement officer who has reasonable grounds to believe the person  
33 was driving or was in actual physical control of a motor vehicle  
34 within this state while under the influence of intoxicating liquor or  
35 drug; and (v) not driving a motor vehicle in this state without a  
36 functioning ignition interlock device as required by the department  
37 under RCW 46.20.720(3). The court may impose conditions of probation  
38 that include nonrepetition, installation of an ignition interlock  
39 device on the probationer's motor vehicle, alcohol or drug treatment,  
40 supervised probation, or other conditions that may be appropriate.

1 The sentence may be imposed in whole or in part upon violation of a  
2 condition of probation during the suspension period.

3 (b) For each violation of mandatory conditions of probation under  
4 (a)(i), (ii), (~~(iii)~~) (iii), (iv), or (v) of this subsection, the  
5 court shall order the convicted person to be confined for thirty  
6 days, which shall not be suspended or deferred.

7 (c) For each incident involving a violation of a mandatory  
8 condition of probation imposed under this subsection, the license,  
9 permit, or privilege to drive of the person shall be suspended by the  
10 court for thirty days or, if such license, permit, or privilege to  
11 drive already is suspended, revoked, or denied at the time the  
12 finding of probation violation is made, the suspension, revocation,  
13 or denial then in effect shall be extended by thirty days. The court  
14 shall notify the department of any suspension, revocation, or denial  
15 or any extension of a suspension, revocation, or denial imposed under  
16 this subsection.

17 (12) **Waiver of electronic home monitoring.** A court may waive the  
18 electronic home monitoring requirements of this chapter when:

19 (a) The offender does not have a dwelling, telephone service, or  
20 any other necessity to operate an electronic home monitoring system.  
21 However, if a court determines that an alcohol monitoring device  
22 utilizing wireless reporting technology is reasonably available, the  
23 court may require the person to obtain such a device during the  
24 period of required electronic home monitoring;

25 (b) The offender does not reside in the state of Washington; or

26 (c) The court determines that there is reason to believe that the  
27 offender would violate the conditions of the electronic home  
28 monitoring penalty.

29 Whenever the mandatory minimum term of electronic home monitoring  
30 is waived, the court shall state in writing the reason for granting  
31 the waiver and the facts upon which the waiver is based, and shall  
32 impose an alternative sentence with similar punitive consequences.  
33 The alternative sentence may include, but is not limited to, use of  
34 an ignition interlock device, the 24/7 sobriety program monitoring,  
35 additional jail time, work crew, or work camp.

36 Whenever the combination of jail time and electronic home  
37 monitoring or alternative sentence would exceed three hundred sixty-  
38 four days, the offender shall serve the jail portion of the sentence  
39 first, and the electronic home monitoring or alternative portion of

1 the sentence shall be reduced so that the combination does not exceed  
2 three hundred sixty-four days.

3 (13) **Extraordinary medical placement.** An offender serving a  
4 sentence under this section, whether or not a mandatory minimum term  
5 has expired, may be granted an extraordinary medical placement by the  
6 jail administrator subject to the standards and limitations set forth  
7 in RCW 9.94A.728(3).

8 (14) **Definitions.** For purposes of this section and RCW 46.61.502  
9 and 46.61.504:

10 (a) A "prior offense" means any of the following:

11 (i) A conviction for a violation of RCW 46.61.502 or an  
12 equivalent local ordinance;

13 (ii) A conviction for a violation of RCW 46.61.504 or an  
14 equivalent local ordinance;

15 (iii) A conviction for a violation of RCW 46.25.110 or an  
16 equivalent local ordinance;

17 (iv) A conviction for a violation of RCW 79A.60.040(2) or an  
18 equivalent local ordinance;

19 (v) A conviction for a violation of RCW 79A.60.040(1) or an  
20 equivalent local ordinance committed in a reckless manner if the  
21 conviction is the result of a charge that was originally filed as a  
22 violation of RCW 79A.60.040(2) or an equivalent local ordinance;

23 (vi) A conviction for a violation of RCW 47.68.220 or an  
24 equivalent local ordinance committed while under the influence of  
25 intoxicating liquor or any drug;

26 ~~((vi))~~ (vii) A conviction for a violation of RCW 47.68.220 or  
27 an equivalent local ordinance committed in a careless or reckless  
28 manner if the conviction is the result of a charge that was  
29 originally filed as a violation of RCW 47.68.220 or an equivalent  
30 local ordinance while under the influence of intoxicating liquor or  
31 any drug;

32 (viii) A conviction for a violation of RCW 46.09.470(2) or an  
33 equivalent local ordinance;

34 ~~((vii))~~ (ix) A conviction for a violation of RCW 46.10.490(2)  
35 or an equivalent local ordinance;

36 ~~((viii))~~ (x) A conviction for a violation of RCW 46.61.520  
37 committed while under the influence of intoxicating liquor or any  
38 drug, or a conviction for a violation of RCW 46.61.520 committed in a  
39 reckless manner or with the disregard for the safety of others if the  
40 conviction is the result of a charge that was originally filed as a

1 violation of RCW 46.61.520 committed while under the influence of  
2 intoxicating liquor or any drug;

3 ~~((ix))~~ (xi) A conviction for a violation of RCW 46.61.522  
4 committed while under the influence of intoxicating liquor or any  
5 drug, or a conviction for a violation of RCW 46.61.522 committed in a  
6 reckless manner or with the disregard for the safety of others if the  
7 conviction is the result of a charge that was originally filed as a  
8 violation of RCW 46.61.522 committed while under the influence of  
9 intoxicating liquor or any drug;

10 ~~((x))~~ (xii) A conviction for a violation of RCW 46.61.5249,  
11 46.61.500, or 9A.36.050 or an equivalent local ordinance, if the  
12 conviction is the result of a charge that was originally filed as a  
13 violation of RCW 46.61.502 or 46.61.504, or an equivalent local  
14 ordinance, or of RCW 46.61.520 or 46.61.522;

15 ~~((xi))~~ (xiii) An out-of-state conviction for a violation that  
16 would have been a violation of (a)(i), (ii), ~~((viii))~~ (x), ~~((ix))~~  
17 (xi), or ~~((x))~~ (xii) of this subsection if committed in this state;

18 ~~((xii))~~ (xiv) A deferred prosecution under chapter 10.05 RCW  
19 granted in a prosecution for a violation of RCW 46.61.502, 46.61.504,  
20 or an equivalent local ordinance;

21 ~~((xiii))~~ (xv) A deferred prosecution under chapter 10.05 RCW  
22 granted in a prosecution for a violation of RCW 46.61.5249, or an  
23 equivalent local ordinance, if the charge under which the deferred  
24 prosecution was granted was originally filed as a violation of RCW  
25 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
26 46.61.520 or 46.61.522;

27 ~~((xiv))~~ (xvi) A deferred prosecution granted in another state  
28 for a violation of driving or having physical control of a vehicle  
29 while under the influence of intoxicating liquor or any drug if the  
30 out-of-state deferred prosecution is equivalent to the deferred  
31 prosecution under chapter 10.05 RCW, including a requirement that the  
32 defendant participate in a chemical dependency treatment program; or

33 ~~((xv))~~ (xvii) A deferred sentence imposed in a prosecution for  
34 a violation of RCW 46.61.5249, 46.61.500, or 9A.36.050, or an  
35 equivalent local ordinance, if the charge under which the deferred  
36 sentence was imposed was originally filed as a violation of RCW  
37 46.61.502 or 46.61.504, or an equivalent local ordinance, or a  
38 violation of RCW 46.61.520 or 46.61.522;

39 If a deferred prosecution is revoked based on a subsequent  
40 conviction for an offense listed in this subsection (14)(a), the

1 subsequent conviction shall not be treated as a prior offense of the  
2 revoked deferred prosecution for the purposes of sentencing;

3 (b) "Treatment" means alcohol or drug treatment approved by the  
4 department of social and health services;

5 (c) "Within seven years" means that the arrest for a prior  
6 offense occurred within seven years before or after the arrest for  
7 the current offense; and

8 (d) "Within ten years" means that the arrest for a prior offense  
9 occurred within ten years before or after the arrest for the current  
10 offense.

11 **Sec. 10.** RCW 46.01.260 and 2010 c 161 s 208 are each amended to  
12 read as follows:

13 (1) Except as provided in subsection (2) of this section, the  
14 director may destroy applications for vehicle registrations, copies  
15 of vehicle registrations issued, applications for drivers' licenses,  
16 copies of issued drivers' licenses, certificates of title and  
17 registration or other documents, and records or supporting papers on  
18 file in the department that have been microfilmed or photographed or  
19 are more than five years old. The director may destroy applications  
20 for vehicle registrations that are renewal applications when the  
21 computer record of the applications has been updated.

22 (2)(a) The director shall not destroy records of convictions or  
23 adjudications of RCW 46.61.502, 46.61.503, 46.61.504, 46.61.520, and  
24 46.61.522, or records of deferred prosecutions granted under RCW  
25 10.05.120 and shall maintain such records permanently on file.

26 (b) The director shall not, within fifteen years from the date of  
27 conviction or adjudication, destroy records if the offense was  
28 originally charged as one of the offenses designated in (a) of this  
29 subsection, convictions or adjudications of the following offenses:  
30 RCW 46.61.500 or 46.61.5249 or any other violation that was  
31 originally charged as one of the offenses designated in (a) of this  
32 subsection.

33 (c) For purposes of RCW 46.52.101 and 46.52.130, offenses subject  
34 to this subsection shall be considered "alcohol-related" offenses.

### 35 **Ignition interlock devices—Standards—Compliance**

36 **Sec. 11.** RCW 43.43.395 and 2013 2nd sp.s. c 35 s 9 are each  
37 amended to read as follows:

1 (1) The state patrol shall by rule provide standards for the  
2 certification, installation, repair, maintenance, monitoring,  
3 inspection, and removal of ignition interlock devices, as defined  
4 under RCW 46.04.215, and equipment as outlined under this section,  
5 and may inspect the records and equipment of manufacturers and  
6 vendors during regular business hours for compliance with statutes  
7 and rules and may suspend or revoke certification for any  
8 noncompliance.

9 (2)(a) When a certified service provider or individual installer  
10 of ignition interlock devices is found to be out of compliance, the  
11 installation privileges of that certified service provider or  
12 individual installer may be suspended or revoked until the certified  
13 service provider or individual installer comes into compliance.  
14 During any suspension or revocation period, the certified service  
15 provider or individual installer is responsible for notifying  
16 affected customers of any changes in their service agreement.

17 (b) A certified service provider or individual installer whose  
18 certification is suspended or revoked for noncompliance has a right  
19 to an administrative hearing under chapter 34.05 RCW to contest the  
20 suspension or revocation, or both. For the administrative hearing,  
21 the procedure and rules of evidence are as specified in chapter 34.05  
22 RCW, except as otherwise provided in this chapter. Any request for an  
23 administrative hearing must be made in writing and must be received  
24 by the state patrol within twenty days after the receipt of the  
25 notice of suspension or revocation.

26 (3)(a) An ignition interlock device must employ:

27 (i) Fuel cell technology. For the purposes of this subsection,  
28 "fuel cell technology" consists of the following electrochemical  
29 method: An electrolyte designed to oxidize the alcohol and release  
30 electrons to be collected by an active electrode; a current flow is  
31 generated within the electrode proportional to the amount of alcohol  
32 oxidized on the fuel cell surface; and the electrical current is  
33 measured and reported as breath alcohol concentration. Fuel cell  
34 technology is highly specific for alcohols((-

35 ~~(b) When reasonably available in the area, as determined by the  
36 state patrol, an ignition interlock device must employ))~~;

37 (ii) Technology capable of taking a photo identification of the  
38 user giving the breath sample and recording on the photo the time the  
39 breath sample was given; and



1 (iii) Technology capable of providing the global positioning  
2 coordinates at the time of each test sequence. Such coordinates must  
3 be displayed within the data log that is downloaded by the  
4 manufacturer and must be made available to the state patrol to be  
5 used for circumvention and tampering investigations.

6 ((+e)) (b) To be certified, an ignition interlock device must:

7 (i) Meet or exceed the minimum test standards according to rules  
8 adopted by the state patrol. Only a notarized statement from a  
9 laboratory that is accredited and certified ((by)) under the current  
10 edition of ISO (the international organization of standardization)  
11 17025 standard for testing and calibration laboratories and is  
12 capable of performing the tests specified will be accepted as proof  
13 of meeting or exceeding the standards. The notarized statement must  
14 include the name and signature of the person in charge of the tests  
15 under the certification statement. The state patrol must adopt by  
16 rule the required language of the certification statement that must,  
17 at a minimum, outline that the testing meets or exceeds all  
18 specifications listed in the federal register adopted in rule by the  
19 state patrol; and

20 (ii) Be maintained in accordance with the rules and standards  
21 adopted by the state patrol.

## 22 **Abstract of driving record—Access—Fee—Violations**

23 **Sec. 12.** RCW 46.52.130 and 2012 c 74 s 6 and 2012 c 73 s 1 are  
24 each reenacted and amended to read as follows:

25 Upon a proper request, the department may furnish an abstract of  
26 a person's driving record as permitted under this section.

27 (1) **Contents of abstract of driving record.** An abstract of a  
28 person's driving record, whenever possible, must include:

29 (a) An enumeration of motor vehicle accidents in which the person  
30 was driving, including:

31 (i) The total number of vehicles involved;

32 (ii) Whether the vehicles were legally parked or moving;

33 (iii) Whether the vehicles were occupied at the time of the  
34 accident; and

35 (iv) Whether the accident resulted in a fatality;

36 (b) Any reported convictions, forfeitures of bail, or findings  
37 that an infraction was committed based upon a violation of any motor  
38 vehicle law;

1 (c) The status of the person's driving privilege in this state;  
2 and

3 (d) Any reports of failure to appear in response to a traffic  
4 citation or failure to respond to a notice of infraction served upon  
5 the named individual by an arresting officer.

6 (2) **Release of abstract of driving record.** An abstract of a  
7 person's driving record may be furnished to the following persons or  
8 entities:

9 (a) **Named individuals.** (i) An abstract of the full driving record  
10 maintained by the department may be furnished to the individual named  
11 in the abstract.

12 (ii) Nothing in this section prevents a court from providing a  
13 copy of the driver's abstract to the individual named in the abstract  
14 or that named individual's attorney, provided that the named  
15 individual has a pending or open infraction or criminal case in that  
16 court. A pending case includes criminal cases that have not reached a  
17 disposition by plea, stipulation, trial, or amended charge. An open  
18 infraction or criminal case includes cases on probation, payment  
19 agreement or subject to, or in collections. Courts may charge a  
20 reasonable fee for the production and copying of the abstract for the  
21 individual.

22 (b) **Employers or prospective employers.** (i)(A) An abstract of the  
23 full driving record maintained by the department may be furnished to  
24 an employer or prospective employer or an agent acting on behalf of  
25 an employer or prospective employer of the named individual for  
26 purposes related to driving by the individual as a condition of  
27 employment or otherwise at the direction of the employer.

28 (B) Release of an abstract of the driving record of an employee  
29 or prospective employee requires a statement signed by: (I) The  
30 employee or prospective employee that authorizes the release of the  
31 record; and (II) the employer attesting that the information is  
32 necessary for employment purposes related to driving by the  
33 individual as a condition of employment or otherwise at the direction  
34 of the employer. If the employer or prospective employer authorizes  
35 an agent to obtain this information on their behalf, this must be  
36 noted in the statement.

37 (C) Upon request of the person named in the abstract provided  
38 under this subsection, and upon that same person furnishing copies of  
39 court records ruling that the person was not at fault in a motor  
40 vehicle accident, the department must indicate on any abstract

1 provided under this subsection that the person was not at fault in  
2 the motor vehicle accident.

3 (ii) In addition to the methods described in (b)(i) of this  
4 subsection, the director may enter into a contractual agreement with  
5 an employer or its agent for the purpose of reviewing the driving  
6 records of existing employees for changes to the record during  
7 specified periods of time. The department shall establish a fee for  
8 this service, which must be deposited in the highway safety fund. The  
9 fee for this service must be set at a level that will not result in a  
10 net revenue loss to the state. Any information provided under this  
11 subsection must be treated in the same manner and is subject to the  
12 same restrictions as driving record abstracts.

13 (c) **Volunteer organizations.** (i) An abstract of the full driving  
14 record maintained by the department may be furnished to a volunteer  
15 organization or an agent for a volunteer organization for which the  
16 named individual has submitted an application for a position that  
17 would require driving by the individual at the direction of the  
18 volunteer organization.

19 (ii) Release of an abstract of the driving record of a  
20 prospective volunteer requires a statement signed by: (A) The  
21 prospective volunteer that authorizes the release of the record; and  
22 (B) the volunteer organization attesting that the information is  
23 necessary for purposes related to driving by the individual at the  
24 direction of the volunteer organization. If the volunteer  
25 organization authorizes an agent to obtain this information on their  
26 behalf, this must be noted in the statement.

27 (d) **Transit authorities.** An abstract of the full driving record  
28 maintained by the department may be furnished to an employee or agent  
29 of a transit authority checking prospective volunteer vanpool drivers  
30 for insurance and risk management needs.

31 (e) **Insurance carriers.** (i) An abstract of the driving record  
32 maintained by the department covering the period of not more than the  
33 last three years may be furnished to an insurance company or its  
34 agent:

35 (A) That has motor vehicle or life insurance in effect covering  
36 the named individual;

37 (B) To which the named individual has applied; or

38 (C) That has insurance in effect covering the employer or a  
39 prospective employer of the named individual.

40 (ii) The abstract provided to the insurance company must:

1 (A) Not contain any information related to actions committed by  
2 law enforcement officers or firefighters, as both terms are defined  
3 in RCW 41.26.030, or by Washington state patrol officers, while  
4 driving official vehicles in the performance of their occupational  
5 duty. This does not apply to any situation where the vehicle was used  
6 in the commission of a misdemeanor or felony;

7 (B) Include convictions under RCW 46.61.5249 and 46.61.525,  
8 except that the abstract must report the convictions only as  
9 negligent driving without reference to whether they are for first or  
10 second degree negligent driving; and

11 (C) Exclude any deferred prosecution under RCW 10.05.060, except  
12 that if a person is removed from a deferred prosecution under RCW  
13 10.05.090, the abstract must show the deferred prosecution as well as  
14 the removal.

15 (iii) Any policy of insurance may not be canceled, nonrenewed,  
16 denied, or have the rate increased on the basis of information  
17 regarding an accident included in the abstract of a driving record,  
18 unless the policyholder was determined to be at fault.

19 (iv) Any insurance company or its agent, for underwriting  
20 purposes relating to the operation of commercial motor vehicles, may  
21 not use any information contained in the abstract relative to any  
22 person's operation of motor vehicles while not engaged in such  
23 employment. Any insurance company or its agent, for underwriting  
24 purposes relating to the operation of noncommercial motor vehicles,  
25 may not use any information contained in the abstract relative to any  
26 person's operation of commercial motor vehicles.

27 (v) The director may enter into a contractual agreement with an  
28 insurance company or its agent for the limited purpose of reviewing  
29 the driving records of existing policyholders for changes to the  
30 record during specified periods of time. The department shall  
31 establish a fee for this service, which must be deposited in the  
32 highway safety fund. The fee for this service must be set at a level  
33 that will not result in a net revenue loss to the state. Any  
34 information provided under this subsection must be treated in the  
35 same manner and is subject to the same restrictions as driving record  
36 abstracts.

37 (f) **Alcohol/drug assessment or treatment agencies.** An abstract of  
38 the driving record maintained by the department covering the period  
39 of not more than the last five years may be furnished to an alcohol/  
40 drug assessment or treatment agency approved by the department of

1 social and health services to which the named individual has applied  
2 or been assigned for evaluation or treatment, for purposes of  
3 assisting employees in making a determination as to what level of  
4 treatment, if any, is appropriate, except that the abstract must:

5 (i) Also include records of alcohol-related offenses, as defined  
6 in RCW 46.01.260(2), covering a period of not more than the last ten  
7 years; and

8 (ii) Indicate whether an alcohol-related offense was originally  
9 charged as a violation of either RCW 46.61.502 or 46.61.504.

10 (g) **Attorneys—City attorneys ((and)), county prosecuting**  
11 **attorneys, and named individual's attorney of record.** An abstract of  
12 the full driving record maintained by the department, including  
13 whether a recorded violation is an alcohol-related offense, as  
14 defined in RCW 46.01.260(2), that was originally charged as a  
15 violation of either RCW 46.61.502 or 46.61.504, may be furnished to  
16 city attorneys ((~~or~~)), county prosecuting attorneys, or the named  
17 individual's attorney of record. City attorneys ((and)), county  
18 prosecuting attorneys, or the named individual's attorney of record  
19 may provide the driving record to alcohol/drug assessment or  
20 treatment agencies approved by the department of social and health  
21 services to which the named individual has applied or been assigned  
22 for evaluation or treatment.

23 (h) **State colleges, universities, or agencies, or units of local**  
24 **government.** An abstract of the full driving record maintained by the  
25 department may be furnished to (i) state colleges, universities, or  
26 agencies for employment and risk management purposes or (ii) units of  
27 local government authorized to self-insure under RCW 48.62.031 for  
28 employment and risk management purposes.

29 (i) **Superintendent of public instruction.** An abstract of the full  
30 driving record maintained by the department may be furnished to the  
31 superintendent of public instruction for review of public school bus  
32 driver records. The superintendent or superintendent's designee may  
33 discuss information on the driving record with an authorized  
34 representative of the employing school district for employment and  
35 risk management purposes.

36 (3) **Release to third parties prohibited.** Any person or entity  
37 receiving an abstract of a person's driving record under subsection  
38 (2)(b) through (i) of this section shall use the abstract exclusively  
39 for his, her, or its own purposes or as otherwise expressly permitted

1 under this section, and shall not divulge any information contained  
2 in the abstract to a third party.

3 (4) **Fee.** The director shall collect a thirteen dollar fee for  
4 each abstract of a person's driving record furnished by the  
5 department. Fifty percent of the fee must be deposited in the highway  
6 safety fund, and fifty percent of the fee must be deposited according  
7 to RCW 46.68.038.

8 (5) **Violation.** (a) Any negligent violation of this section is a  
9 gross misdemeanor.

10 (b) Any intentional violation of this section is a class C  
11 felony.

12 **Sec. 13.** RCW 9.94A.589 and 2002 c 175 s 7 are each amended to  
13 read as follows:

14 (1)(a) Except as provided in (b) (~~(c)~~), (c), or (d) of this  
15 subsection, whenever a person is to be sentenced for two or more  
16 current offenses, the sentence range for each current offense shall  
17 be determined by using all other current and prior convictions as if  
18 they were prior convictions for the purpose of the offender score:  
19 PROVIDED, That if the court enters a finding that some or all of the  
20 current offenses encompass the same criminal conduct then those  
21 current offenses shall be counted as one crime. Sentences imposed  
22 under this subsection shall be served concurrently. Consecutive  
23 sentences may only be imposed under the exceptional sentence  
24 provisions of RCW 9.94A.535. "Same criminal conduct," as used in this  
25 subsection, means two or more crimes that require the same criminal  
26 intent, are committed at the same time and place, and involve the  
27 same victim. This definition applies in cases involving vehicular  
28 assault or vehicular homicide even if the victims occupied the same  
29 vehicle.

30 (b) Whenever a person is convicted of two or more serious violent  
31 offenses arising from separate and distinct criminal conduct, the  
32 standard sentence range for the offense with the highest seriousness  
33 level under RCW 9.94A.515 shall be determined using the offender's  
34 prior convictions and other current convictions that are not serious  
35 violent offenses in the offender score and the standard sentence  
36 range for other serious violent offenses shall be determined by using  
37 an offender score of zero. The standard sentence range for any  
38 offenses that are not serious violent offenses shall be determined  
39 according to (a) of this subsection. All sentences imposed under

1 ((~~(b)~~—of)) this subsection (1)(b) shall be served consecutively to  
2 each other and concurrently with sentences imposed under (a) of this  
3 subsection.

4 (c) If an offender is convicted under RCW 9.41.040 for unlawful  
5 possession of a firearm in the first or second degree and for the  
6 felony crimes of theft of a firearm or possession of a stolen  
7 firearm, or both, the standard sentence range for each of these  
8 current offenses shall be determined by using all other current and  
9 prior convictions, except other current convictions for the felony  
10 crimes listed in this subsection (1)(c), as if they were prior  
11 convictions. The offender shall serve consecutive sentences for each  
12 conviction of the felony crimes listed in this subsection (1)(c), and  
13 for each firearm unlawfully possessed.

14 (d) All sentences imposed under RCW 46.61.502(6), 46.61.504(6),  
15 or 46.61.5055(4) shall be served consecutively to any sentences  
16 imposed under RCW 46.20.740 and 46.20.750.

17 (2)(a) Except as provided in (b) of this subsection, whenever a  
18 person while under sentence for conviction of a felony commits  
19 another felony and is sentenced to another term of confinement, the  
20 latter term shall not begin until expiration of all prior terms.

21 (b) Whenever a second or later felony conviction results in  
22 community supervision with conditions not currently in effect, under  
23 the prior sentence or sentences of community supervision the court  
24 may require that the conditions of community supervision contained in  
25 the second or later sentence begin during the immediate term of  
26 community supervision and continue throughout the duration of the  
27 consecutive term of community supervision.

28 (3) Subject to subsections (1) and (2) of this section, whenever  
29 a person is sentenced for a felony that was committed while the  
30 person was not under sentence for conviction of a felony, the  
31 sentence shall run concurrently with any felony sentence which has  
32 been imposed by any court in this or another state or by a federal  
33 court subsequent to the commission of the crime being sentenced  
34 unless the court pronouncing the current sentence expressly orders  
35 that they be served consecutively.

36 (4) Whenever any person granted probation under RCW 9.95.210 or  
37 9.92.060, or both, has the probationary sentence revoked and a prison  
38 sentence imposed, that sentence shall run consecutively to any  
39 sentence imposed pursuant to this chapter, unless the court

1 pronouncing the subsequent sentence expressly orders that they be  
2 served concurrently.

3 (5) In the case of consecutive sentences, all periods of total  
4 confinement shall be served before any partial confinement, community  
5 restitution, community supervision, or any other requirement or  
6 conditions of any of the sentences. Except for exceptional sentences  
7 as authorized under RCW 9.94A.535, if two or more sentences that run  
8 consecutively include periods of community supervision, the aggregate  
9 of the community supervision period shall not exceed twenty-four  
10 months.

11 **Sec. 14.** RCW 46.61.503 and 2013 c 3 s 34 are each amended to  
12 read as follows:

13 (1) Notwithstanding any other provision of this title, a person  
14 is guilty of driving or being in physical control of a motor vehicle  
15 after consuming alcohol or marijuana if the person operates or is in  
16 physical control of a motor vehicle within this state and the person:

17 (a) Is under the age of twenty-one; and

18 (b) Has, within two hours after operating or being in physical  
19 control of the motor vehicle, either:

20 (i) An alcohol concentration of at least 0.02 but less than the  
21 concentration specified in RCW 46.61.502, as shown by analysis of the  
22 person's breath or blood made under RCW 46.61.506; or

23 (ii) A THC concentration above 0.00 but less than the  
24 concentration specified in RCW 46.61.502, as shown by analysis of the  
25 person's blood made under RCW 46.61.506.

26 (2) It is an affirmative defense to a violation of subsection (1)  
27 of this section, which the defendant must prove by a preponderance of  
28 the evidence, that the defendant consumed a sufficient quantity of  
29 alcohol or marijuana after the time of driving or being in physical  
30 control and before the administration of an analysis of the person's  
31 breath or blood to cause the defendant's alcohol or THC concentration  
32 to be in violation of subsection (1) of this section within two hours  
33 after driving or being in physical control. The court shall not admit  
34 evidence of this defense unless the defendant notifies the  
35 prosecution prior to the earlier of: (a) Seven days prior to trial;  
36 or (b) the omnibus or pretrial hearing in the case of the defendant's  
37 intent to assert the affirmative defense.

38 (3) No person may be convicted under this section for being in  
39 physical control of a motor vehicle and it is an affirmative defense



1 to any action pursuant to RCW 46.20.308 to suspend, revoke, or deny  
2 the privilege to drive, if, prior to being pursued by a law  
3 enforcement officer, the person has moved the vehicle safely off the  
4 roadway.

5 (4) Analyses of blood or breath samples obtained more than two  
6 hours after the alleged driving or being in physical control may be  
7 used as evidence that within two hours of the alleged driving or  
8 being in physical control, a person had an alcohol or THC  
9 concentration in violation of subsection (1) of this section.

10 ((+4)) (5) A violation of this section is a misdemeanor.

11 **Sec. 15.** RCW 46.20.755 and 2010 c 269 s 5 are each amended to  
12 read as follows:

13 If a person is required, as part of the person's judgment and  
14 sentence or as a condition of release, to install an ignition  
15 interlock device on all motor vehicles operated by the person and the  
16 person is under the jurisdiction of the municipality or county  
17 probation or supervision department, the probation or supervision  
18 department must verify the installation of the ignition interlock  
19 device or devices. The municipality or county probation or  
20 supervision department satisfies the requirement to verify the  
21 installation or installations if the municipality or county probation  
22 or supervision department receives written verification by one or  
23 more companies doing business in the state that it has installed the  
24 required device on a vehicle owned or operated by the person. The  
25 municipality or county shall have no further obligation to supervise  
26 the use of the ignition interlock device or devices by the person and  
27 shall not be civilly liable for any injuries or damages caused by the  
28 person for failing to use an ignition interlock device or for driving  
29 under the influence of intoxicating liquor or any drug or being in  
30 actual physical control of a motor vehicle under the influence of  
31 intoxicating liquor or any drug.

32 **Sec. 16.** RCW 36.28A.320 and 2014 c 221 s 913 are each amended to  
33 read as follows:

34 There is hereby established in the state treasury the 24/7  
35 sobriety account. The account shall be maintained and administered by  
36 the criminal justice training commission to reimburse the state for  
37 costs associated with establishing and operating the 24/7 sobriety  
38 program and the Washington association of sheriffs and police chiefs

1 for ongoing 24/7 sobriety program administration costs. (~~{The}~~) An  
2 appropriation is not required for expenditures and the account is not  
3 subject to allotment procedures under chapter 43.88 RCW. Funds in the  
4 account may not lapse and must carry forward from biennium to  
5 biennium. Interest earned by the account must be retained in the  
6 account. The criminal justice training commission may accept for  
7 deposit in the account money from donations, gifts, grants,  
8 participation fees, and user fees or payments. (~~Expenditures from~~  
9 the account shall be budgeted through the normal budget process.))

10 **Sec. 17.** RCW 36.28A.330 and 2013 2nd sp.s. c 35 s 26 are each  
11 amended to read as follows:

12 The definitions in this section apply throughout RCW 36.28A.300  
13 through 36.28A.390 unless the context clearly requires otherwise.

14 (1) "24/7 (~~(electronic alcohol/drug monitoring)~~) sobriety  
15 program" means (~~(the monitoring by the use of any electronic~~  
16 ~~instrument that is capable of determining and monitoring the presence~~  
17 ~~of alcohol or drugs in a person's body and includes any associated~~  
18 ~~equipment a participant needs in order for the device to properly~~  
19 ~~perform. Monitoring may also include mandatory urine analysis tests~~  
20 ~~as ordered by the court)) a program in which a participant submits to  
21 testing of the participant's blood, breath, urine, or other bodily  
22 substance to determine the presence of alcohol or any drug as defined  
23 in RCW 46.61.540. Testing must take place at a location or locations  
24 designated by the participating agency, or, with the concurrence of  
25 the Washington association of sheriffs and police chiefs, by an  
26 alternate method.~~

27 (2) "Participant" means a person who has one or more prior  
28 convictions for a violation of RCW 46.61.502 or 46.61.504 and who has  
29 been ordered by a court to participate in the 24/7 sobriety program.

30 (3) "Participating agency" means (~~(a sheriff's office or a~~  
31 ~~designated entity named by a sheriff that has agreed to participate~~  
32 ~~in the 24/7 sobriety program by enrolling participants, administering~~  
33 ~~one or more of the tests, and submitting reports to the Washington~~  
34 ~~association of sheriffs and police chiefs)) any entity located in the  
35 state of Washington that has a written agreement with the Washington  
36 association of sheriffs and police chiefs to participate in the 24/7  
37 sobriety program, and includes, but is not limited to, a sheriff, a  
38 police chief, any other local, regional, or state corrections or  
39 probation entity, and any other entity designated by a sheriff,~~

1 police chief, or any other local, regional, or state corrections or  
2 probation entity to perform testing in the 24/7 sobriety program.

3 (4) "Participation agreement" means a written document executed  
4 by a participant agreeing to participate in the 24/7 sobriety program  
5 in a form approved by the Washington association of sheriffs and  
6 police chiefs that contains the following information:

7 (a) The type, frequency, and time period of testing;

8 (b) The location of testing;

9 (c) The fees and payment procedures required for testing; and

10 (d) The responsibilities and obligations of the participant under  
11 the 24/7 sobriety program.

12 ~~((5) "24/7 sobriety program" means a twenty-four hour and seven  
13 day a week sobriety program in which a participant submits to the  
14 testing of the participant's blood, breath, urine, or other bodily  
15 substances in order to determine the presence of alcohol, marijuana,  
16 or any controlled substance in the participant's body.))~~

17 **Sec. 18.** RCW 36.28A.370 and 2013 2nd sp.s. c 35 s 30 are each  
18 amended to read as follows:

19 (1) ~~((Funds in the 24/7 sobriety account shall be distributed as  
20 follows:~~

21 ~~(a))~~ Any daily user fee, installation fee, deactivation fee,  
22 enrollment fee, or monitoring fee ~~((collected under the 24/7 sobriety  
23 program shall))~~ must be collected by the ~~((sheriff or chief, or an  
24 entity designated by the sheriff or chief, and deposited with the  
25 county or city treasurer of the proper county or city, the proceeds  
26 of which shall be applied))~~ participating agency and used ~~((only))~~ to  
27 defray the ~~((recurring))~~ participating agency's costs of the 24/7  
28 sobriety program ~~((including maintaining equipment, funding support  
29 services, and ensuring compliance; and)).~~

30 ~~((b))~~ (2) Any participation fee must be collected ~~((in the  
31 administration of testing under))~~ by the participating agency and  
32 deposited in the state 24/7 sobriety ((program)) account to cover  
33 24/7 sobriety program administration costs incurred by the Washington  
34 association of sheriffs and police chiefs ~~((shall be collected by the  
35 sheriff or chief, or an entity designated by the sheriff or chief,  
36 and deposited in the 24/7 sobriety account)).~~

37 ~~((2))~~ (3) All applicable fees shall be paid by the participant  
38 contemporaneously or in advance of the time when the fee becomes due;

1 however, cities and counties may subsidize or pay any applicable  
2 fees.

3 (4) A city or county may accept donations, gifts, grants, and  
4 other assistance to defray the participating agency's costs of the  
5 24/7 sobriety program.

6 **Sec. 19.** RCW 36.28A.390 and 2013 2nd sp.s. c 35 s 32 are each  
7 amended to read as follows:

8 (1) A general authority Washington peace officer, as defined in  
9 RCW 10.93.020, who has probable cause to believe that a participant  
10 has violated the terms of participation in the 24/7 sobriety program  
11 may immediately take the participant into custody and cause him or  
12 her to be held until an appearance before a judge on the next  
13 judicial day.

14 (2) A participant who violates the terms of participation in the  
15 24/7 sobriety program or does not pay the required fees or associated  
16 costs pretrial or posttrial shall, at a minimum:

17 (a) Receive a written warning notice for a first violation;

18 (b) Serve ~~((a-term))~~ the lesser of two days imprisonment or if  
19 posttrial, the entire remaining sentence imposed by the court for a  
20 second violation;

21 (c) Serve ~~((a-term-of-up-to))~~ the lesser of five days  
22 imprisonment or if posttrial, the entire remaining sentence imposed  
23 by the court for a third violation;

24 (d) Serve ~~((a-term-of-up-to))~~ the lesser of ten days imprisonment  
25 or if posttrial, the entire remaining sentence imposed by the court

26 for a fourth violation; and  
27 (e) For a fifth or subsequent violation pretrial, the participant  
28 shall abide by the order of the court. For posttrial participants,  
29 the participant shall serve the entire remaining sentence imposed by  
30 the court.

31 ~~((2) A sheriff or chief, or the designee of a sheriff or chief,~~  
32 ~~who has probable cause to believe that a participant has violated the~~  
33 ~~terms of participation in the 24/7 sobriety program or has not paid~~  
34 ~~the required fees or associated costs shall immediately take the~~  
35 ~~participant into custody and cause him or her to be held until an~~  
36 ~~appearance before a judge on the next judicial day.))~~ (3) The court  
37 may remove a participant from the 24/7 sobriety program at any time  
38 for noncompliance with the terms of participation.

1       **Sec. 20.** RCW 10.21.015 and 2014 c 24 s 1 are each amended to  
2 read as follows:

3       (1) Under this chapter, "pretrial release program" is any  
4 program, either run directly by a county or city, or by a private or  
5 public entity through contract with a county or city, into whose  
6 custody an offender is released prior to trial and which agrees to  
7 supervise the offender. As used in this section, "supervision"  
8 includes, but is not limited to, work release, day monitoring, ((~~or~~))  
9 electronic monitoring, or participation in a 24/7 sobriety program.

10       (2) A pretrial release program may not agree to supervise, or  
11 accept into its custody, an offender who is currently awaiting trial  
12 for a violent offense or sex offense, as defined in RCW 9.94A.030,  
13 who has been convicted of one or more violent offenses or sex  
14 offenses in the ten years before the date of the current offense,  
15 unless the offender's release before trial was secured with a payment  
16 of bail.

17       **Sec. 21.** RCW 46.61.502 and 2013 c 3 s 33 (Initiative Measure No.  
18 502) are each amended to read as follows:

19       (1) A person is guilty of driving while under the influence of  
20 intoxicating liquor, marijuana, or any drug if the person drives a  
21 vehicle within this state:

22       (a) And the person has, within two hours after driving, an  
23 alcohol concentration of 0.08 or higher as shown by analysis of the  
24 person's breath or blood made under RCW 46.61.506; or

25       (b) The person has, within two hours after driving, a THC  
26 concentration of 5.00 or higher as shown by analysis of the person's  
27 blood made under RCW 46.61.506; or

28       (c) While the person is under the influence of or affected by  
29 intoxicating liquor, marijuana, or any drug; or

30       (d) While the person is under the combined influence of or  
31 affected by intoxicating liquor, marijuana, and any drug.

32       (2) The fact that a person charged with a violation of this  
33 section is or has been entitled to use a drug under the laws of this  
34 state shall not constitute a defense against a charge of violating  
35 this section.

36       (3)(a) It is an affirmative defense to a violation of subsection  
37 (1)(a) of this section, which the defendant must prove by a  
38 preponderance of the evidence, that the defendant consumed a  
39 sufficient quantity of alcohol after the time of driving and before

1 the administration of an analysis of the person's breath or blood to  
2 cause the defendant's alcohol concentration to be 0.08 or more within  
3 two hours after driving. The court shall not admit evidence of this  
4 defense unless the defendant notifies the prosecution prior to the  
5 omnibus or pretrial hearing in the case of the defendant's intent to  
6 assert the affirmative defense.

7 (b) It is an affirmative defense to a violation of subsection  
8 (1)(b) of this section, which the defendant must prove by a  
9 preponderance of the evidence, that the defendant consumed a  
10 sufficient quantity of marijuana after the time of driving and before  
11 the administration of an analysis of the person's blood to cause the  
12 defendant's THC concentration to be 5.00 or more within two hours  
13 after driving. The court shall not admit evidence of this defense  
14 unless the defendant notifies the prosecution prior to the omnibus or  
15 pretrial hearing in the case of the defendant's intent to assert the  
16 affirmative defense.

17 (4)(a) Analyses of blood or breath samples obtained more than two  
18 hours after the alleged driving may be used as evidence that within  
19 two hours of the alleged driving, a person had an alcohol  
20 concentration of 0.08 or more in violation of subsection (1)(a) of  
21 this section, and in any case in which the analysis shows an alcohol  
22 concentration above 0.00 may be used as evidence that a person was  
23 under the influence of or affected by intoxicating liquor or any drug  
24 in violation of subsection (1)(c) or (d) of this section.

25 (b) Analyses of blood samples obtained more than two hours after  
26 the alleged driving may be used as evidence that within two hours of  
27 the alleged driving, a person had a THC concentration of 5.00 or more  
28 in violation of subsection (1)(b) of this section, and in any case in  
29 which the analysis shows a THC concentration above 0.00 may be used  
30 as evidence that a person was under the influence of or affected by  
31 marijuana in violation of subsection (1)(c) or (d) of this section.

32 (5) Except as provided in subsection (6) of this section, a  
33 violation of this section is a gross misdemeanor.

34 (6) It is a class C felony punishable under chapter 9.94A RCW, or  
35 chapter 13.40 RCW if the person is a juvenile, if:

36 (a) The person has (~~four~~) three or more prior offenses within  
37 ten years as defined in RCW 46.61.5055; or

38 (b) The person has ever previously been convicted of:

39 (i) Vehicular homicide while under the influence of intoxicating  
40 liquor or any drug, RCW 46.61.520(1)(a);

1 (ii) Vehicular assault while under the influence of intoxicating  
2 liquor or any drug, RCW 46.61.522(1)(b);

3 (iii) An out-of-state offense comparable to the offense specified  
4 in (b)(i) or (ii) of this subsection; or

5 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

6 **Sec. 22.** RCW 46.61.504 and 2013 c 3 s 35 (Initiative Measure No.  
7 502) are each amended to read as follows:

8 (1) A person is guilty of being in actual physical control of a  
9 motor vehicle while under the influence of intoxicating liquor or any  
10 drug if the person has actual physical control of a vehicle within  
11 this state:

12 (a) And the person has, within two hours after being in actual  
13 physical control of the vehicle, an alcohol concentration of 0.08 or  
14 higher as shown by analysis of the person's breath or blood made  
15 under RCW 46.61.506; or

16 (b) The person has, within two hours after being in actual  
17 physical control of a vehicle, a THC concentration of 5.00 or higher  
18 as shown by analysis of the person's blood made under RCW 46.61.506;  
19 or

20 (c) While the person is under the influence of or affected by  
21 intoxicating liquor or any drug; or

22 (d) While the person is under the combined influence of or  
23 affected by intoxicating liquor and any drug.

24 (2) The fact that a person charged with a violation of this  
25 section is or has been entitled to use a drug under the laws of this  
26 state does not constitute a defense against any charge of violating  
27 this section. No person may be convicted under this section and it is  
28 an affirmative defense to any action pursuant to RCW 46.20.308 to  
29 suspend, revoke, or deny the privilege to drive, if, prior to being  
30 pursued by a law enforcement officer, the person has moved the  
31 vehicle safely off the roadway.

32 (3)(a) It is an affirmative defense to a violation of subsection  
33 (1)(a) of this section which the defendant must prove by a  
34 preponderance of the evidence that the defendant consumed a  
35 sufficient quantity of alcohol after the time of being in actual  
36 physical control of the vehicle and before the administration of an  
37 analysis of the person's breath or blood to cause the defendant's  
38 alcohol concentration to be 0.08 or more within two hours after being  
39 in such control. The court shall not admit evidence of this defense

1 unless the defendant notifies the prosecution prior to the omnibus or  
2 pretrial hearing in the case of the defendant's intent to assert the  
3 affirmative defense.

4 (b) It is an affirmative defense to a violation of subsection  
5 (1)(b) of this section, which the defendant must prove by a  
6 preponderance of the evidence, that the defendant consumed a  
7 sufficient quantity of marijuana after the time of being in actual  
8 physical control of the vehicle and before the administration of an  
9 analysis of the person's blood to cause the defendant's THC  
10 concentration to be 5.00 or more within two hours after being in  
11 control of the vehicle. The court shall not admit evidence of this  
12 defense unless the defendant notifies the prosecution prior to the  
13 omnibus or pretrial hearing in the case of the defendant's intent to  
14 assert the affirmative defense.

15 (4)(a) Analyses of blood or breath samples obtained more than two  
16 hours after the alleged being in actual physical control of a vehicle  
17 may be used as evidence that within two hours of the alleged being in  
18 such control, a person had an alcohol concentration of 0.08 or more  
19 in violation of subsection (1)(a) of this section, and in any case in  
20 which the analysis shows an alcohol concentration above 0.00 may be  
21 used as evidence that a person was under the influence of or affected  
22 by intoxicating liquor or any drug in violation of subsection (1)(c)  
23 or (d) of this section.

24 (b) Analyses of blood samples obtained more than two hours after  
25 the alleged being in actual physical control of a vehicle may be used  
26 as evidence that within two hours of the alleged being in control of  
27 the vehicle, a person had a THC concentration of 5.00 or more in  
28 violation of subsection (1)(b) of this section, and in any case in  
29 which the analysis shows a THC concentration above 0.00 may be used  
30 as evidence that a person was under the influence of or affected by  
31 marijuana in violation of subsection (1)(c) or (d) of this section.

32 (5) Except as provided in subsection (6) of this section, a  
33 violation of this section is a gross misdemeanor.

34 (6) It is a class C felony punishable under chapter 9.94A RCW, or  
35 chapter 13.40 RCW if the person is a juvenile, if:

36 (a) The person has (~~four~~) three or more prior offenses within  
37 ten years as defined in RCW 46.61.5055; or

38 (b) The person has ever previously been convicted of:

39 (i) Vehicular homicide while under the influence of intoxicating  
40 liquor or any drug, RCW 46.61.520(1)(a);



- 1 (ii) Vehicular assault while under the influence of intoxicating
- 2 liquor or any drug, RCW 46.61.522(1)(b);
- 3 (iii) An out-of-state offense comparable to the offense specified
- 4 in (b)(i) or (ii) of this subsection; or
- 5 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

6 **Sec. 23.** RCW 9.94A.515 and 2013 c 322 s 26, 2013 c 290 s 8, 2013  
 7 c 267 s 2, and 2013 c 153 s 2 are each reenacted and amended to read  
 8 as follows:

9 TABLE 2

10 CRIMES INCLUDED WITHIN  
 11 EACH SERIOUSNESS LEVEL

- 12 XVI Aggravated Murder 1 (RCW
- 13 10.95.020)
- 14 XV Homicide by abuse (RCW 9A.32.055)
- 15 Malicious explosion 1 (RCW
- 16 70.74.280(1))
- 17 Murder 1 (RCW 9A.32.030)
- 18 XIV Murder 2 (RCW 9A.32.050)
- 19 Trafficking 1 (RCW 9A.40.100(1))
- 20 XIII Malicious explosion 2 (RCW
- 21 70.74.280(2))
- 22 Malicious placement of an explosive 1
- 23 (RCW 70.74.270(1))
- 24 XII Assault 1 (RCW 9A.36.011)
- 25 Assault of a Child 1 (RCW 9A.36.120)
- 26 Malicious placement of an imitation
- 27 device 1 (RCW 70.74.272(1)(a))
- 28 Promoting Commercial Sexual Abuse
- 29 of a Minor (RCW 9.68A.101)
- 30 Rape 1 (RCW 9A.44.040)
- 31 Rape of a Child 1 (RCW 9A.44.073)
- 32 Trafficking 2 (RCW 9A.40.100((2)))
- 33 (3)
- 34 XI Manslaughter 1 (RCW 9A.32.060)

1 Rape 2 (RCW 9A.44.050)  
2 Rape of a Child 2 (RCW 9A.44.076)  
3 Vehicular Homicide, by being under  
4 the influence of intoxicating liquor  
5 or any drug (RCW 46.61.520)  
6 X Child Molestation 1 (RCW 9A.44.083)  
7 Criminal Mistreatment 1 (RCW  
8 9A.42.020)  
9 Indecent Liberties (with forcible  
10 compulsion) (RCW  
11 9A.44.100(1)(a))  
12 Kidnapping 1 (RCW 9A.40.020)  
13 Leading Organized Crime (RCW  
14 9A.82.060(1)(a))  
15 Malicious explosion 3 (RCW  
16 70.74.280(3))  
17 Sexually Violent Predator Escape  
18 (RCW 9A.76.115)  
19 IX Abandonment of Dependent Person 1  
20 (RCW 9A.42.060)  
21 Assault of a Child 2 (RCW 9A.36.130)  
22 Explosive devices prohibited (RCW  
23 70.74.180)  
24 Hit and Run—Death (RCW  
25 46.52.020(4)(a))  
26 Homicide by Watercraft, by being  
27 under the influence of intoxicating  
28 liquor or any drug (RCW  
29 79A.60.050)  
30 Inciting Criminal Profiteering (RCW  
31 9A.82.060(1)(b))  
32 Malicious placement of an explosive 2  
33 (RCW 70.74.270(2))  
34 Robbery 1 (RCW 9A.56.200)  
35 Sexual Exploitation (RCW 9.68A.040)

1 VIII Arson 1 (RCW 9A.48.020)  
2 Commercial Sexual Abuse of a Minor  
3 (RCW 9.68A.100)  
4 Homicide by Watercraft, by the  
5 operation of any vessel in a  
6 reckless manner (RCW  
7 79A.60.050)  
8 Manslaughter 2 (RCW 9A.32.070)  
9 Promoting Prostitution 1 (RCW  
10 9A.88.070)  
11 Theft of Ammonia (RCW 69.55.010)  
12 Vehicular Homicide, by the operation  
13 of any vehicle in a reckless  
14 manner (RCW 46.61.520)  
15 VII Burglary 1 (RCW 9A.52.020)  
16 Child Molestation 2 (RCW 9A.44.086)  
17 Civil Disorder Training (RCW  
18 9A.48.120)  
19 Dealing in depictions of minor engaged  
20 in sexually explicit conduct 1  
21 (RCW 9.68A.050(1))  
22 Drive-by Shooting (RCW 9A.36.045)  
23 Homicide by Watercraft, by disregard  
24 for the safety of others (RCW  
25 79A.60.050)  
26 Indecent Liberties (without forcible  
27 compulsion) (RCW 9A.44.100(1)  
28 (b) and (c))  
29 Introducing Contraband 1 (RCW  
30 9A.76.140)  
31 Malicious placement of an explosive 3  
32 (RCW 70.74.270(3))  
33 Negligently Causing Death By Use of a  
34 Signal Preemption Device (RCW  
35 46.37.675)

1 Sending, bringing into state depictions  
2 of minor engaged in sexually  
3 explicit conduct 1 (RCW  
4 9.68A.060(1))  
5 Unlawful Possession of a Firearm in  
6 the first degree (RCW  
7 9.41.040(1))  
8 Use of a Machine Gun in Commission  
9 of a Felony (RCW 9.41.225)  
10 Vehicular Homicide, by disregard for  
11 the safety of others (RCW  
12 46.61.520)  
13 VI Bail Jumping with Murder 1 (RCW  
14 9A.76.170(3)(a))  
15 Bribery (RCW 9A.68.010)  
16 Incest 1 (RCW 9A.64.020(1))  
17 Intimidating a Judge (RCW 9A.72.160)  
18 Intimidating a Juror/Witness (RCW  
19 9A.72.110, 9A.72.130)  
20 Malicious placement of an imitation  
21 device 2 (RCW 70.74.272(1)(b))  
22 Possession of Depictions of a Minor  
23 Engaged in Sexually Explicit  
24 Conduct 1 (RCW 9.68A.070(1))  
25 Rape of a Child 3 (RCW 9A.44.079)  
26 Theft of a Firearm (RCW 9A.56.300)  
27 Unlawful Storage of Ammonia (RCW  
28 69.55.020)  
29 V Abandonment of Dependent Person 2  
30 (RCW 9A.42.070)  
31 Advancing money or property for  
32 extortionate extension of credit  
33 (RCW 9A.82.030)  
34 Bail Jumping with class A Felony  
35 (RCW 9A.76.170(3)(b))  
36 Child Molestation 3 (RCW 9A.44.089)

1 Criminal Mistreatment 2 (RCW  
2 9A.42.030)  
3 Custodial Sexual Misconduct 1 (RCW  
4 9A.44.160)  
5 Dealing in Depictions of Minor  
6 Engaged in Sexually Explicit  
7 Conduct 2 (RCW 9.68A.050(2))  
8 Domestic Violence Court Order  
9 Violation (RCW 10.99.040,  
10 10.99.050, 26.09.300, 26.10.220,  
11 26.26.138, 26.50.110, 26.52.070,  
12 or 74.34.145)  
13 ~~((Driving While Under the Influence~~  
14 ~~(RCW 46.61.502(6))))~~  
15 Extortion 1 (RCW 9A.56.120)  
16 Extortionate Extension of Credit (RCW  
17 9A.82.020)  
18 Extortionate Means to Collect  
19 Extensions of Credit (RCW  
20 9A.82.040)  
21 Incest 2 (RCW 9A.64.020(2))  
22 Kidnapping 2 (RCW 9A.40.030)  
23 Perjury 1 (RCW 9A.72.020)  
24 Persistent prison misbehavior (RCW  
25 9.94.070)  
26 ~~((Physical Control of a Vehicle While~~  
27 ~~Under the Influence (RCW~~  
28 ~~46.61.504(6))))~~  
29 Possession of a Stolen Firearm (RCW  
30 9A.56.310)  
31 Rape 3 (RCW 9A.44.060)  
32 Rendering Criminal Assistance 1  
33 (RCW 9A.76.070)

1 Sending, Bringing into State  
2 Depictions of Minor Engaged in  
3 Sexually Explicit Conduct 2  
4 (RCW 9.68A.060(2))  
5 Sexual Misconduct with a Minor 1  
6 (RCW 9A.44.093)  
7 Sexually Violating Human Remains  
8 (RCW 9A.44.105)  
9 Stalking (RCW 9A.46.110)  
10 Taking Motor Vehicle Without  
11 Permission 1 (RCW 9A.56.070)  
12 IV Arson 2 (RCW 9A.48.030)  
13 Assault 2 (RCW 9A.36.021)  
14 Assault 3 (of a Peace Officer with a  
15 Projectile Stun Gun) (RCW  
16 9A.36.031(1)(h))  
17 Assault by Watercraft (RCW  
18 79A.60.060)  
19 Bribing a Witness/Bribe Received by  
20 Witness (RCW 9A.72.090,  
21 9A.72.100)  
22 Cheating 1 (RCW 9.46.1961)  
23 Commercial Bribery (RCW  
24 9A.68.060)  
25 Counterfeiting (RCW 9.16.035(4))  
26 Driving While Under the Influence  
27 (RCW 46.61.502(6))  
28 Endangerment with a Controlled  
29 Substance (RCW 9A.42.100)  
30 Escape 1 (RCW 9A.76.110)  
31 Hit and Run—Injury (RCW  
32 46.52.020(4)(b))  
33 Hit and Run with Vessel—Injury  
34 Accident (RCW 79A.60.200(3))  
35 Identity Theft 1 (RCW 9.35.020(2))

1 Indecent Exposure to Person Under  
2 Age Fourteen (subsequent sex  
3 offense) (RCW 9A.88.010)

4 Influencing Outcome of Sporting Event  
5 (RCW 9A.82.070)

6 Malicious Harassment (RCW  
7 9A.36.080)

8 Physical Control of a Vehicle While  
9 Under the Influence (RCW  
10 46.61.504(6))

11 Possession of Depictions of a Minor  
12 Engaged in Sexually Explicit  
13 Conduct 2 (RCW 9.68A.070(2))

14 Residential Burglary (RCW  
15 9A.52.025)

16 Robbery 2 (RCW 9A.56.210)

17 Theft of Livestock 1 (RCW 9A.56.080)

18 Threats to Bomb (RCW 9.61.160)

19 Trafficking in Stolen Property 1 (RCW  
20 9A.82.050)

21 Unlawful factoring of a credit card or  
22 payment card transaction (RCW  
23 9A.56.290(4)(b))

24 Unlawful transaction of health  
25 coverage as a health care service  
26 contractor (RCW 48.44.016(3))

27 Unlawful transaction of health  
28 coverage as a health maintenance  
29 organization (RCW 48.46.033(3))

30 Unlawful transaction of insurance  
31 business (RCW 48.15.023(3))

32 Unlicensed practice as an insurance  
33 professional (RCW 48.17.063(2))

34 Use of Proceeds of Criminal  
35 Profiteering (RCW 9A.82.080 (1)  
36 and (2))

1 Vehicle Prowling 2 (third or  
2 subsequent offense) (RCW  
3 9A.52.100(3))  
4 Vehicular Assault, by being under the  
5 influence of intoxicating liquor or  
6 any drug, or by the operation or  
7 driving of a vehicle in a reckless  
8 manner (RCW 46.61.522)  
9 Viewing of Depictions of a Minor  
10 Engaged in Sexually Explicit  
11 Conduct 1 (RCW 9.68A.075(1))  
12 Willful Failure to Return from  
13 Furlough (RCW 72.66.060)  
14 III Animal Cruelty 1 (Sexual Conduct or  
15 Contact) (RCW 16.52.205(3))  
16 Assault 3 (Except Assault 3 of a Peace  
17 Officer With a Projectile Stun  
18 Gun) (RCW 9A.36.031 except  
19 subsection (1)(h))  
20 Assault of a Child 3 (RCW 9A.36.140)  
21 Bail Jumping with class B or C Felony  
22 (RCW 9A.76.170(3)(c))  
23 Burglary 2 (RCW 9A.52.030)  
24 Communication with a Minor for  
25 Immoral Purposes (RCW  
26 9.68A.090)  
27 Criminal Gang Intimidation (RCW  
28 9A.46.120)  
29 Custodial Assault (RCW 9A.36.100)  
30 Cyberstalking (subsequent conviction  
31 or threat of death) (RCW  
32 9.61.260(3))  
33 Escape 2 (RCW 9A.76.120)  
34 Extortion 2 (RCW 9A.56.130)  
35 Harassment (RCW 9A.46.020)



1 Intimidating a Public Servant (RCW  
2 9A.76.180)  
3 Introducing Contraband 2 (RCW  
4 9A.76.150)  
5 Malicious Injury to Railroad Property  
6 (RCW 81.60.070)  
7 Mortgage Fraud (RCW 19.144.080)  
8 Negligently Causing Substantial  
9 Bodily Harm By Use of a Signal  
10 Preemption Device (RCW  
11 46.37.674)  
12 Organized Retail Theft 1 (RCW  
13 9A.56.350(2))  
14 Perjury 2 (RCW 9A.72.030)  
15 Possession of Incendiary Device (RCW  
16 9.40.120)  
17 Possession of Machine Gun or Short-  
18 Barreled Shotgun or Rifle (RCW  
19 9.41.190)  
20 Promoting Prostitution 2 (RCW  
21 9A.88.080)  
22 Retail Theft with Special  
23 Circumstances 1 (RCW  
24 9A.56.360(2))  
25 Securities Act violation (RCW  
26 21.20.400)  
27 Tampering with a Witness (RCW  
28 9A.72.120)  
29 Telephone Harassment (subsequent  
30 conviction or threat of death)  
31 (RCW 9.61.230(2))  
32 Theft of Livestock 2 (RCW 9A.56.083)  
33 Theft with the Intent to Resell 1 (RCW  
34 9A.56.340(2))  
35 Trafficking in Stolen Property 2 (RCW  
36 9A.82.055)

1 Unlawful Hunting of Big Game 1  
2 (RCW 77.15.410(3)(b))  
3 Unlawful Imprisonment (RCW  
4 9A.40.040)  
5 Unlawful Misbranding of Food Fish or  
6 Shellfish 1 (RCW 69.04.938(3))  
7 Unlawful possession of firearm in the  
8 second degree (RCW 9.41.040(2))  
9 Unlawful Taking of Endangered Fish  
10 or Wildlife 1 (RCW  
11 77.15.120(3)(b))  
12 Unlawful Trafficking in Fish, Shellfish,  
13 or Wildlife 1 (RCW  
14 77.15.260(3)(b))  
15 Unlawful Use of a Nondesignated  
16 Vessel (RCW 77.15.530(4))  
17 Vehicular Assault, by the operation or  
18 driving of a vehicle with disregard  
19 for the safety of others (RCW  
20 46.61.522)  
21 Willful Failure to Return from Work  
22 Release (RCW 72.65.070)  
23 II Commercial Fishing Without a License  
24 1 (RCW 77.15.500(3)(b))  
25 Computer Trespass 1 (RCW  
26 9A.52.110)  
27 Counterfeiting (RCW 9.16.035(3))  
28 Engaging in Fish Dealing Activity  
29 Unlicensed 1 (RCW 77.15.620(3))  
30 Escape from Community Custody  
31 (RCW 72.09.310)  
32 Failure to Register as a Sex Offender  
33 (second or subsequent offense)  
34 (RCW 9A.44.132)  
35 Health Care False Claims (RCW  
36 48.80.030)

1 Identity Theft 2 (RCW 9.35.020(3))  
2 Improperly Obtaining Financial  
3 Information (RCW 9.35.010)  
4 Malicious Mischief 1 (RCW  
5 9A.48.070)  
6 Organized Retail Theft 2 (RCW  
7 9A.56.350(3))  
8 Possession of Stolen Property 1 (RCW  
9 9A.56.150)  
10 Possession of a Stolen Vehicle (RCW  
11 9A.56.068)  
12 Retail Theft with Special  
13 Circumstances 2 (RCW  
14 9A.56.360(3))  
15 Scrap Processing, Recycling, or  
16 Supplying Without a License  
17 (second or subsequent offense)  
18 (RCW 19.290.100)  
19 Theft 1 (RCW 9A.56.030)  
20 Theft of a Motor Vehicle (RCW  
21 9A.56.065)  
22 Theft of Rental, Leased, or Lease-  
23 purchased Property (valued at one  
24 thousand five hundred dollars or  
25 more) (RCW 9A.56.096(5)(a))  
26 Theft with the Intent to Resell 2 (RCW  
27 9A.56.340(3))  
28 Trafficking in Insurance Claims (RCW  
29 48.30A.015)  
30 Unlawful factoring of a credit card or  
31 payment card transaction (RCW  
32 9A.56.290(4)(a))  
33 Unlawful Participation of Non-Indians  
34 in Indian Fishery (RCW  
35 77.15.570(2))

1 Unlawful Practice of Law (RCW  
2 2.48.180)  
3 Unlawful Purchase or Use of a License  
4 (RCW 77.15.650(3)(b))  
5 Unlawful Trafficking in Fish, Shellfish,  
6 or Wildlife 2 (RCW  
7 77.15.260(3)(a))  
8 Unlicensed Practice of a Profession or  
9 Business (RCW 18.130.190(7))  
10 Voyeurism (RCW 9A.44.115)  
11 I Attempting to Elude a Pursuing Police  
12 Vehicle (RCW 46.61.024)  
13 False Verification for Welfare (RCW  
14 74.08.055)  
15 Forgery (RCW 9A.60.020)  
16 Fraudulent Creation or Revocation of a  
17 Mental Health Advance Directive  
18 (RCW 9A.60.060)  
19 Malicious Mischief 2 (RCW  
20 9A.48.080)  
21 Mineral Trespass (RCW 78.44.330)  
22 Possession of Stolen Property 2 (RCW  
23 9A.56.160)  
24 Reckless Burning 1 (RCW 9A.48.040)  
25 Spotlighting Big Game 1 (RCW  
26 77.15.450(3)(b))  
27 Suspension of Department Privileges 1  
28 (RCW 77.15.670(3)(b))  
29 Taking Motor Vehicle Without  
30 Permission 2 (RCW 9A.56.075)  
31 Theft 2 (RCW 9A.56.040)

1 Theft of Rental, Leased, or Lease-  
2 purchased Property (valued at two  
3 hundred fifty dollars or more but  
4 less than one thousand five  
5 hundred dollars) (RCW  
6 9A.56.096(5)(b))  
7 Transaction of insurance business  
8 beyond the scope of licensure  
9 (RCW 48.17.063)  
10 Unlawful Fish and Shellfish Catch  
11 Accounting (RCW  
12 77.15.630(3)(b))  
13 Unlawful Issuance of Checks or Drafts  
14 (RCW 9A.56.060)  
15 Unlawful Possession of Fictitious  
16 Identification (RCW 9A.56.320)  
17 Unlawful Possession of Instruments of  
18 Financial Fraud (RCW 9A.56.320)  
19 Unlawful Possession of Payment  
20 Instruments (RCW 9A.56.320)  
21 Unlawful Possession of a Personal  
22 Identification Device (RCW  
23 9A.56.320)  
24 Unlawful Production of Payment  
25 Instruments (RCW 9A.56.320)  
26 ~~((Unlawful Release of Deleterious  
27 Exotic Wildlife (RCW  
28 77.15.250(2)(b))))~~  
29 Unlawful Trafficking in Food Stamps  
30 (RCW 9.91.142)  
31 Unlawful Use of Food Stamps (RCW  
32 9.91.144)  
33 Unlawful Use of Net to Take Fish 1  
34 (RCW 77.15.580(3)(b))  
35 Unlawful Use of Prohibited Aquatic  
36 Animal Species (RCW  
37 77.15.253(3))

1 Unlawfully Releasing, Planting,  
2 Possessing, or Placing Deleterious  
3 Exotic Wildlife (RCW  
4 77.15.250(2)(b))  
5 Vehicle Prowl 1 (RCW 9A.52.095)  
6 Violating Commercial Fishing Area or  
7 Time 1 (RCW 77.15.550(3)(b))

8 [2013 c 322 § 26; 2013 c 290 § 8; 2013 c 267 § 2; 2013 c 153 § 2.  
9 Prior: 2012 c 176 § 3; 2012 c 162 § 1; prior: 2010 c 289 § 11; 2010 c  
10 227 § 9; prior: 2008 c 108 § 23; 2008 c 38 § 1; prior: 2007 c 368 §  
11 14; 2007 c 199 § 10; prior: 2006 c 277 § 6; 2006 c 228 § 9; 2006 c  
12 191 § 2; 2006 c 139 § 2; 2006 c 128 § 3; 2006 c 73 § 12; prior: (2006  
13 c 125 § 5 repealed by 2006 c 126 § 7); 2005 c 458 § 2; 2005 c 183 §  
14 9; prior: 2004 c 176 § 2; 2004 c 94 § 3; (2004 c 94 § 2 expired July  
15 1, 2004); prior: 2003 c 335 § 5; (2003 c 335 § 4 expired July 1,  
16 2004); 2003 c 283 § 33; (2003 c 283 § 32 expired July 1, 2004); 2003  
17 c 267 § 3; (2003 c 267 § 2 expired July 1, 2004); 2003 c 250 § 14;  
18 (2003 c 250 § 13 expired July 1, 2004); 2003 c 119 § 8; (2003 c 119 §  
19 7 expired July 1, 2004); 2003 c 53 § 56; 2003 c 52 § 4; (2003 c 52 §  
20 3 expired July 1, 2004); prior: 2002 c 340 § 2; 2002 c 324 § 2; 2002  
21 c 290 § 7; (2002 c 290 § 2 expired July 1, 2003); 2002 c 253 § 4;  
22 2002 c 229 § 2; 2002 c 134 § 2; 2002 c 133 § 4; prior: 2001 2nd sp.s.  
23 c 12 § 361; 2001 c 300 § 4; 2001 c 217 § 12; 2001 c 17 § 1; prior:  
24 2001 c 310 § 4; 2001 c 287 § 3; 2001 c 224 § 3; 2001 c 222 § 24; 2001  
25 c 207 § 3; 2000 c 225 § 5; 2000 c 119 § 17; 2000 c 66 § 2; prior:  
26 1999 c 352 § 3; 1999 c 322 § 5; 1999 c 45 § 4; prior: 1998 c 290 § 4;  
27 1998 c 219 § 4; 1998 c 82 § 1; 1998 c 78 § 1; prior: 1997 c 365 § 4;  
28 1997 c 346 § 3; 1997 c 340 § 1; 1997 c 338 § 51; 1997 c 266 § 15;  
29 1997 c 120 § 5; prior: 1996 c 302 § 6; 1996 c 205 § 3; 1996 c 36 § 2;  
30 prior: 1995 c 385 § 2; 1995 c 285 § 28; 1995 c 129 § 3 (Initiative  
31 Measure No. 159); prior: (1994 sp.s. c 7 § 510 repealed by 1995 c 129  
32 § 19 (Initiative Measure No. 159)); 1994 c 275 § 20; 1994 c 53 § 2;  
33 prior: 1992 c 145 § 4; 1992 c 75 § 3; 1991 c 32 § 3; 1990 c 3 § 702;  
34 prior: 1989 2nd ex.s. c 1 § 3; 1989 c 412 § 3; 1989 c 405 § 1; 1989 c  
35 271 § 102; 1989 c 99 § 1; prior: 1988 c 218 § 2; 1988 c 145 § 12;  
36 1988 c 62 § 2; prior: 1987 c 224 § 1; 1987 c 187 § 4; 1986 c 257 §  
37 23; 1984 c 209 § 17; 1983 c 115 § 3. Formerly RCW 9.94A.320.]

1       **Sec. 24.** RCW 46.61.5054 and 2011 c 293 s 12 are each amended to  
2 read as follows:

3       (1)(a) In addition to penalties set forth in RCW 46.61.5051  
4 through 46.61.5053 until September 1, 1995, and RCW 46.61.5055  
5 thereafter, a two hundred fifty dollar fee shall be assessed to a  
6 person who is either convicted, sentenced to a lesser charge, or  
7 given deferred prosecution, as a result of an arrest for violating  
8 RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522. This fee is for  
9 the purpose of funding the Washington state toxicology laboratory and  
10 the Washington state patrol for grants and activities to increase the  
11 conviction rate and decrease the incidence of persons driving under  
12 the influence of alcohol or drugs.

13       (b) Upon a verified petition by the person assessed the fee, the  
14 court may suspend payment of all or part of the fee if it finds that  
15 the person does not have the ability to pay.

16       (c) When a minor has been adjudicated a juvenile offender for an  
17 offense which, if committed by an adult, would constitute a violation  
18 of RCW 46.61.502, 46.61.504, 46.61.520, or 46.61.522, the court shall  
19 assess the two hundred fifty dollar fee under (a) of this subsection.  
20 Upon a verified petition by a minor assessed the fee, the court may  
21 suspend payment of all or part of the fee if it finds that the minor  
22 does not have the ability to pay the fee.

23       (2) The fee assessed under subsection (1) of this section shall  
24 be collected by the clerk of the court and, subject to subsection  
25 (~~((4))~~) (5) of this section, one hundred seventy-five dollars of the  
26 fee must be distributed as follows:

27       (a) Forty percent shall be subject to distribution under RCW  
28 3.46.120, 3.50.100, 35.20.220, 3.62.020, 3.62.040, or 10.82.070.

29       (b) The remainder of the fee shall be forwarded to the state  
30 treasurer who shall, through June 30, 1997, deposit: Fifty percent in  
31 the death investigations' account to be used solely for funding the  
32 state toxicology laboratory blood or breath testing programs; and  
33 fifty percent in the state patrol highway account to be used solely  
34 for funding activities to increase the conviction rate and decrease  
35 the incidence of persons driving under the influence of alcohol or  
36 drugs. Effective July 1, 1997, the remainder of the fee shall be  
37 forwarded to the state treasurer who shall deposit: Fifteen percent  
38 in the death investigations' account to be used solely for funding  
39 the state toxicology laboratory blood or breath testing programs; and  
40 eighty-five percent in the state patrol highway account to be used

1 solely for funding activities to increase the conviction rate and  
2 decrease the incidence of persons driving under the influence of  
3 alcohol or drugs.

4 (3) Twenty-five dollars of the fee assessed under subsection (1)  
5 of this section must be distributed to the highway safety (~~account~~  
6 ~~{fund}~~) fund to be used solely for funding Washington traffic safety  
7 commission grants to reduce statewide collisions caused by persons  
8 driving under the influence of alcohol or drugs. Grants awarded under  
9 this subsection may be for projects that encourage collaboration with  
10 other community, governmental, and private organizations, and that  
11 utilize innovative approaches based on best practices or proven  
12 strategies supported by research or rigorous evaluation. Grants  
13 recipients may include, for example:

14 (a) DUI courts; and

15 (b) Jurisdictions implementing the victim impact panel registries  
16 under RCW 46.61.5152 and 10.01.230.

17 (4) Fifty dollars of the fee assessed under subsection (1) of  
18 this section must be distributed to the highway safety fund to be  
19 used solely for funding Washington traffic safety commission grants  
20 to organizations within counties targeted for programs to reduce  
21 driving under the influence of alcohol or drugs.

22 (5) If the court has suspended payment of part of the fee  
23 pursuant to subsection (1)(b) or (c) of this section, amounts  
24 collected shall be distributed proportionately.

25 (~~(+5)~~) (6) This section applies to any offense committed on or  
26 after July 1, 1993.

27 NEW SECTION. Sec. 25. A new section is added to chapter 18.130  
28 RCW to read as follows:

29 It is not professional misconduct for a physician, registered  
30 nurse, licensed practical nurse, nursing assistant as defined in  
31 chapter 18.88A RCW, physician assistant as defined in chapter 18.71A  
32 RCW, first responder as defined in chapter 18.73 RCW, emergency  
33 medical technician as defined in chapter 18.73 RCW, health care  
34 assistant as defined in chapter 18.135 RCW, or any technician trained  
35 in withdrawing blood, to collect a blood sample without a person's  
36 consent when the physician, registered nurse, licensed practical  
37 nurse, nursing assistant as defined in chapter 18.88A RCW, physician  
38 assistant as defined in chapter 18.71A RCW, first responder as  
39 defined in chapter 18.73 RCW, emergency medical technician as defined



1 in chapter 18.73 RCW, health care assistant as defined in chapter  
2 18.135 RCW, or any technician trained in withdrawing blood was  
3 directed by a law enforcement officer to do so for the purpose of a  
4 blood test under the provisions of a search warrant or exigent  
5 circumstances: PROVIDED, That nothing in this section shall relieve a  
6 physician, registered nurse, licensed practical nurse, nursing  
7 assistant as defined in chapter 18.88A RCW, physician assistant as  
8 defined in chapter 18.71A RCW, first responder as defined in chapter  
9 18.73 RCW, emergency medical technician as defined in chapter 18.73  
10 RCW, health care assistant as defined in chapter 18.135 RCW, a  
11 forensic phlebotomist under section 27 of this act, or any technician  
12 trained in withdrawing blood from professional discipline arising  
13 from the use of improper procedures or from failing to exercise the  
14 required standard of care.

15 NEW SECTION. **Sec. 26.** A new section is added to chapter 43.70  
16 RCW to read as follows:

17 (1) The secretary, in consultation with health profession boards  
18 and commissions, the Washington state criminal justice training  
19 commission, and the Washington state patrol, shall establish by rule  
20 the administrative procedures and administrative requirements for  
21 initial issue, renewal, and reissue of a credential for forensic  
22 phlebotomists as defined in section 27 of this act. Failure to renew  
23 invalidates the credential and all privileges granted by the  
24 credential. Administrative procedures and administrative requirements  
25 do not include establishing, monitoring, and enforcing qualifications  
26 for licensure, scope or standards of practice, continuing competency  
27 mechanisms, and discipline when such authority is authorized in  
28 statute to a health profession board or commission or to the criminal  
29 justice training commission. For the purposes of this section, "in  
30 consultation with" means providing an opportunity for meaningful  
31 participation in development of rules consistent with processes set  
32 forth in RCW 34.05.310.

33 (2) Notwithstanding any provision of law to the contrary that  
34 provides for a licensing period for any type of license subject to  
35 this chapter including those under RCW 18.130.040, the secretary may,  
36 from time to time, extend or otherwise modify the duration of any  
37 licensing, certification, or registration period, whether an initial  
38 or renewal period, if the secretary determines that it would result  
39 in a more economical or efficient operation of state government and

1 that the public health, safety, or welfare would not be substantially  
2 adversely affected thereby. However, no license, certification, or  
3 registration may be issued or approved for a period in excess of four  
4 years, without renewal. Such extension, reduction, or other  
5 modification of a licensing, certification, or registration period  
6 shall be by rule or regulation of the department adopted in  
7 accordance with the provisions of chapter 34.05 RCW. Such rules and  
8 regulations may provide a method for imposing and collecting such  
9 additional proportional fee as may be required for the extended or  
10 modified period.

11 NEW SECTION. **Sec. 27.** A new section is added to chapter 46.04  
12 RCW to read as follows:

13 "Forensic phlebotomist" means a police officer, law enforcement  
14 officer, or employee of a correctional facility or detention  
15 facility, who completed a venipuncture training program required  
16 under section 26 of this act and who is collecting a blood sample for  
17 forensic testing pursuant to a search warrant, a waiver of the  
18 warrant requirement, or exigent circumstances.

19 **Sec. 28.** RCW 46.61.506 and 2013 c 3 s 37 are each amended to  
20 read as follows:

21 (1) Upon the trial of any civil or criminal action or proceeding  
22 arising out of acts alleged to have been committed by any person  
23 while driving or in actual physical control of a vehicle while under  
24 the influence of intoxicating liquor or any drug, if the person's  
25 alcohol concentration is less than 0.08 or the person's THC  
26 concentration is less than 5.00, it is evidence that may be  
27 considered with other competent evidence in determining whether the  
28 person was under the influence of intoxicating liquor or any drug.

29 (2)(a) The breath analysis of the person's alcohol concentration  
30 shall be based upon grams of alcohol per two hundred ten liters of  
31 breath.

32 (b) The blood analysis of the person's THC concentration shall be  
33 based upon nanograms per milliliter of whole blood.

34 (c) The foregoing provisions of this section shall not be  
35 construed as limiting the introduction of any other competent  
36 evidence bearing upon the question whether the person was under the  
37 influence of intoxicating liquor or any drug.

1 (3) Analysis of the person's blood or breath to be considered  
2 valid under the provisions of this section or RCW 46.61.502 or  
3 46.61.504 shall have been performed according to methods approved by  
4 the state toxicologist and by an individual possessing a valid permit  
5 issued by the state toxicologist for this purpose. The state  
6 toxicologist is directed to approve satisfactory techniques or  
7 methods, to supervise the examination of individuals to ascertain  
8 their qualifications and competence to conduct such analyses, and to  
9 issue permits which shall be subject to termination or revocation at  
10 the discretion of the state toxicologist.

11 (4)(a) A breath test performed by any instrument approved by the  
12 state toxicologist shall be admissible at trial or in an  
13 administrative proceeding if the prosecution or department produces  
14 prima facie evidence of the following:

15 (i) The person who performed the test was authorized to perform  
16 such test by the state toxicologist;

17 (ii) The person being tested did not vomit or have anything to  
18 eat, drink, or smoke for at least fifteen minutes prior to  
19 administration of the test;

20 (iii) The person being tested did not have any foreign  
21 substances, not to include dental work, fixed or removable, in his or  
22 her mouth at the beginning of the fifteen-minute observation period;

23 (iv) Prior to the start of the test, the temperature of any  
24 liquid simulator solution utilized as an external standard, as  
25 measured by a thermometer approved of by the state toxicologist was  
26 thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

27 (v) The internal standard test resulted in the message  
28 "verified";

29 (vi) The two breath samples agree to within plus or minus ten  
30 percent of their mean to be determined by the method approved by the  
31 state toxicologist;

32 (vii) The result of the test of the liquid simulator solution  
33 external standard or dry gas external standard result did lie  
34 between .072 to .088 inclusive; and

35 (viii) All blank tests gave results of .000.

36 (b) For purposes of this section, "prima facie evidence" is  
37 evidence of sufficient circumstances that would support a logical and  
38 reasonable inference of the facts sought to be proved. In assessing  
39 whether there is sufficient evidence of the foundational facts, the  
40 court or administrative tribunal is to assume the truth of the

1 prosecution's or department's evidence and all reasonable inferences  
2 from it in a light most favorable to the prosecution or department.

3 (c) Nothing in this section shall be deemed to prevent the  
4 subject of the test from challenging the reliability or accuracy of  
5 the test, the reliability or functioning of the instrument, or any  
6 maintenance procedures. Such challenges, however, shall not preclude  
7 the admissibility of the test once the prosecution or department has  
8 made a prima facie showing of the requirements contained in (a) of  
9 this subsection. Instead, such challenges may be considered by the  
10 trier of fact in determining what weight to give to the test result.

11 (5) When a blood test is administered under the provisions of RCW  
12 46.20.308, or pursuant to a search warrant, exigent circumstances, or  
13 a waiver of the warrant requirement, the withdrawal of blood for the  
14 purpose of determining its alcoholic or drug content may be performed  
15 only by a physician, a registered nurse, a licensed practical nurse,  
16 a nursing assistant as defined in chapter 18.88A RCW, a physician  
17 assistant as defined in chapter 18.71A RCW, a first responder as  
18 defined in chapter 18.73 RCW, an emergency medical technician as  
19 defined in chapter 18.73 RCW, a health care assistant as defined in  
20 chapter 18.135 RCW, or any technician trained in withdrawing blood.  
21 This limitation shall not apply to the taking of breath specimens.

22 (6) The person tested may have a physician, or a qualified  
23 technician, chemist, registered nurse, or other qualified person of  
24 his or her own choosing administer one or more tests in addition to  
25 any administered at the direction of a law enforcement officer. The  
26 test will be admissible if the person establishes the general  
27 acceptability of the testing technique or method. The failure or  
28 inability to obtain an additional test by a person shall not preclude  
29 the admission of evidence relating to the test or tests taken at the  
30 direction of a law enforcement officer.

31 (7) Upon the request of the person who shall submit to a test or  
32 tests at the request of a law enforcement officer, full information  
33 concerning the test or tests shall be made available to him or her or  
34 his or her attorney.

35 **Sec. 29.** RCW 46.61.508 and 1977 ex.s. c 143 s 1 are each amended  
36 to read as follows:

37 No physician, registered nurse, (~~qualified technician~~) licensed  
38 practical nurse, nursing assistant as defined in chapter 18.88A RCW,  
39 physician assistant as defined in chapter 18.71A RCW, first responder

1 as defined in chapter 18.73 RCW, emergency medical technician as  
2 defined in chapter 18.73 RCW, health care assistant as defined in  
3 chapter 18.135 RCW, forensic phlebotomist under section 27 of this  
4 act, or any technician trained in withdrawing blood, or hospital, or  
5 duly licensed clinical laboratory employing or utilizing services of  
6 such physician, registered nurse, licensed practical nurse, nursing  
7 assistant, physician assistant, first responder, emergency medical  
8 technician, health care assistant, or qualified technician, shall  
9 incur any civil or criminal liability as a result of the act of  
10 withdrawing blood from any person when directed by a law enforcement  
11 officer to do so for the purpose of a blood test under the provisions  
12 of a search warrant, a waiver of the search warrant requirement,  
13 exigent circumstances, or RCW 46.20.308, as now or hereafter amended.  
14 Refusal by a physician, registered nurse, licensed practical nurse,  
15 nursing assistant as defined in chapter 18.88A RCW, physician  
16 assistant as defined in chapter 18.71A RCW, first responder as  
17 defined in chapter 18.73 RCW, emergency medical technician as defined  
18 in chapter 18.73 RCW, health care assistant as defined in chapter  
19 18.135 RCW, or any technician trained in withdrawing blood, or  
20 hospital, or duly licensed clinical laboratory employing or utilizing  
21 services of such physician, registered nurse, licensed practical  
22 nurse, nursing assistant, physician assistant, first responder,  
23 emergency medical technician, health care assistant, or qualified  
24 technician, to withdraw blood shall not constitute a refusal to obey  
25 a law enforcement officer, obstruction of a law enforcement  
26 investigation, or otherwise subject said person to criminal or civil  
27 liability: PROVIDED, That nothing in this section shall relieve any  
28 physician, registered nurse, licensed practical nurse, nursing  
29 assistant, physician assistant, first responder, emergency medical  
30 technician, health care assistant, forensic phlebotomist, qualified  
31 technician, or hospital or duly licensed clinical laboratory from  
32 civil liability arising from the use of improper procedures or  
33 failing to exercise the required standard of care."

**E2SHB 1276** - S COMM AMD

By Committee on Law & Justice

**NOT ADOPTED 4/15/2015**

34 On page 1, line 1 of the title, after "driving;" strike the  
35 remainder of the title and insert "amending RCW 10.21.055, 46.20.385,

1 46.20.740, 46.20.308, 46.20.750, 46.25.120, 46.61.5055, 46.01.260,  
2 43.43.395, 9.94A.589, 46.61.503, 46.20.755, 36.28A.320, 36.28A.330,  
3 36.28A.370, 36.28A.390, 10.21.015, 46.61.502, 46.61.504, 46.61.5054,  
4 46.61.506, and 46.61.508; reenacting and amending RCW 46.52.130 and  
5 9.94A.515; adding a new section to chapter 46.61 RCW; adding a new  
6 section to chapter 18.130 RCW; adding a new section to chapter 43.70  
7 RCW; adding a new section to chapter 46.04 RCW; creating a new  
8 section; and prescribing penalties."

EFFECT: A fourth DUI or PC offense is a class C felony ranked at level IV on the felony sentence grid. An additional \$50 fee is assessed on all persons convicted, sentenced to a lesser charge, or given a deferred prosecution as a result of a conviction for DUI, PC, vehicular homicide, or vehicular assault. The money goes to the highway safety account to be used solely for funding Washington traffic safety commission grants to organizations within counties to combat driving under the influence of alcohol or drugs. Breath testing for the presence of drugs is allowed. The 24/7 sobriety program remains a pilot program. First time DUI or PC offenders are not eligible for the 24/7 sobriety program. The 24/7 sobriety program is used for DUI or PC offenders only. The secretary of the department of health, in consultation with other health profession boards and commissions, the Washington criminal justice training commission, and the Washington state patrol, must establish rules, administrative procedures, and requirements for the licensing, certification, and registration of forensic phlebotomists. It is not professional misconduct for any technician trained in withdrawing blood, to collect a blood sample without a person's consent when these professionals are directed by a law enforcement officer to do so for the purpose of a blood test under the provisions of a search warrant or exigent circumstances.

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